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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1916

No. [redacted]8

UNION OIL COMPANY OF CALIFORNIA, PLAINTIFF IN ERROR,

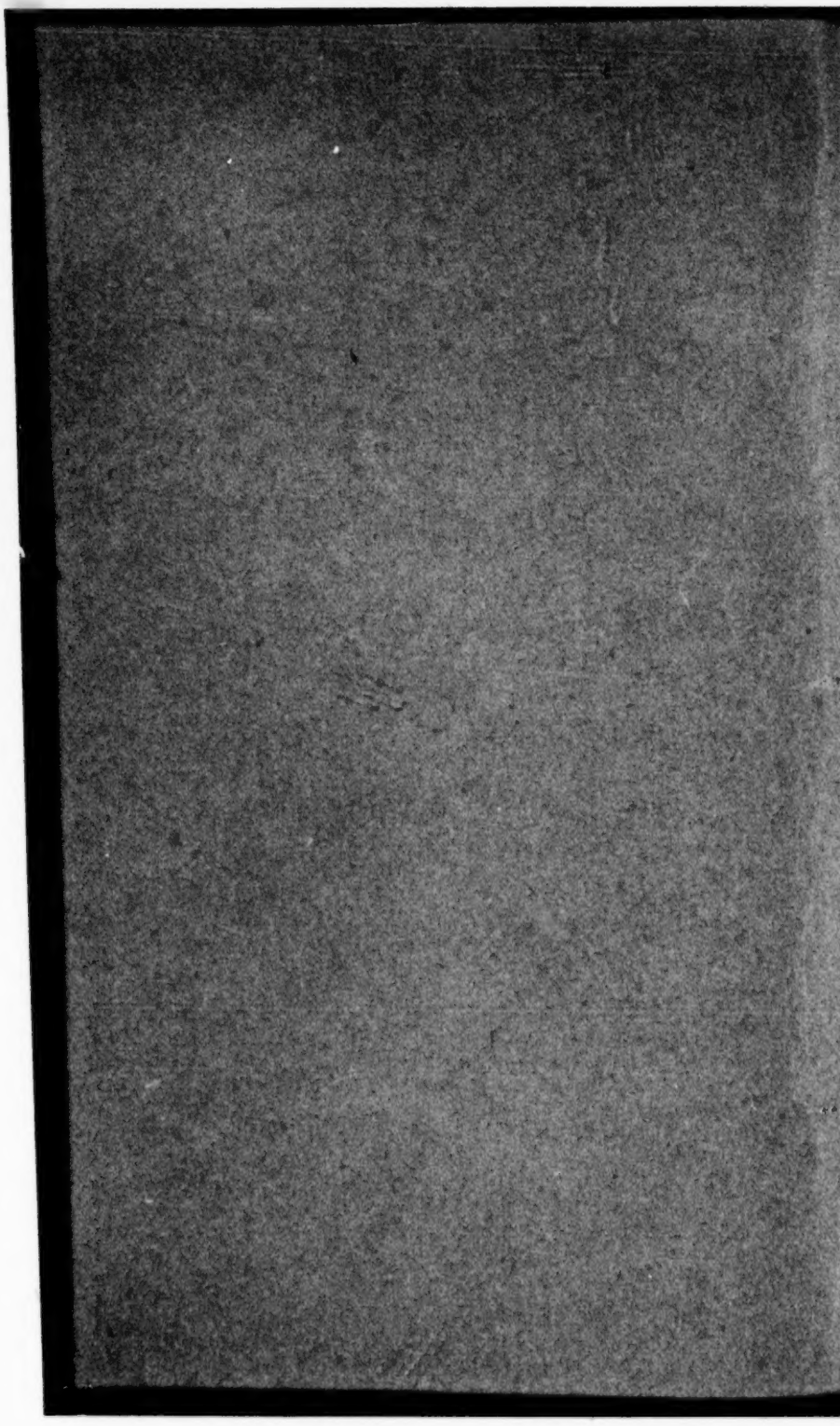
vs.

S. R. SMITH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED NOVEMBER 22, 1915.

(25,002)



(25,002)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 296.

UNION OIL COMPANY OF CALIFORNIA, PLAINTIFF IN ERROR,

vs.

S. R. SMITH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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In the Supreme Court of the State of California.

S. R. SMITH, Plaintiff and Respondent,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant and Appellant.

Appeal from the Superior Court of the County of Ventura, State of California, Hon. Robert M. Clarke, Judge.

TRANSCRIPT ON APPEAL.

Alton M. Cates, Attorney for Plaintiff and Respondent.
T. O. Toland, Arthur H. Blanchard, and Don G. Bowker, Attorneys for Defendant and Appellant.

Filed this 15th day of January, 1912. B. Grant Taylor, Clerk; M. C. Van Allen, Deputy Clerk.

5 In the Superior Court of the County of Ventura, State of California.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Complaint to Quiet Title and for Injunction.

Comes now the plaintiff above named and complaining of the defendant, alleges:

I.

That the Union Oil Company of California is now, and was at all times herein stated, a corporation organized and existing under and by virtue of the laws of the State of California.

II.

That the plaintiff is the owner of, in the possession of, and
6 entitled to the possession of that certain placer mining claim known as the "Schley" placer mining claim, situate, lying and being in what is known as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and more particularly described as follows, to-wit:

Beginning at the southwest corner of the "Syracuse" placer mining claim; thence north 5280 feet to a monument of stone on the south line of the "Revelation" placer mining claim; thence west along the south line of the said "Revelation" placer mining claim 1320 feet to a monument of stone, located at the southwest corner of the said "Revelation" placer mining claim; thence south 5280 feet to a monument of stone, located on the north line of the "Baltimore" placer mining claim; thence east along the north line of said "Baltimore" placer mining claim, 1320 feet to the place of beginning, and containing 160 acres of land more or less.

III.

That said defendant claims an estate and interest in the above described tract of land adverse to the said plaintiff; that the said claim of defendant is without any right whatever, and the said defendant has not any estate, right, title or interest whatever, in the said land or premises or any part thereof.

IV.

That the said property herein described is chiefly valuable for the petroleum oil and other minerals contained therein.

V.

7 That the defendant threatens to and will, unless restrained by an order of this Honorable Court, go upon said premises, erect buildings and other structures thereon, and erect a drilling rig to drill and bore for oil to the great and irreparable injury of this plaintiff.

Wherefore, Plaintiff prays for judgment:

1. That defendant be required to set forth the nature of its claim and that all adverse claims of the defendant be determined by a decree of this Court.

2. That by said decree it be adjudged that the defendant has no estate or interest whatever in or to said land in this complaint described, and that the right, title and interest of the plaintiff therein to said land is good and valid.

3. That the defendant be restrained pending the action, and upon the trial perpetually from in any manner interfering with said property or entering upon or exercising acts of ownership over the same, or any part thereof, or mining in, or extracting any oil or other minerals therefrom and from in any manner interfering with plaintiff's use, occupation and control of said premises, and that plaintiff's title be quieted against the claim of the defendant, and for such other and further relief as may be proper in the premises.

And for costs of suit.

ALTON M. GATES,
Attorney for Plaintiff.

8 STATE OF CALIFORNIA,
County of Los Angeles, ss:

S. R. Smith, being first duly sworn, says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

S. R. SMITH.

Subscribed and sworn to before me this 23rd day of November, 1910.

[SEAL.] JENNIE SHUTT,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) Filed November 25, 1910. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

9 In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Answer.

Comes now the defendant above named and in answer to plaintiff's complaint herein admits, denies and alleges as follows, towit:

1. Admits all of the matters alleged and set forth in Paragraph I of said complaint.

2. Defendant denies that the plaintiff is the owner of that certain placer mining claim known as the "Schley" placer mining claim, situate, lying and being in what is known as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and as particularly described in plaintiff's complaint in Paragraph II, beginning with line 24 and to and including line 30 thereof; Defendant denies that the plaintiff is in the possession of that certain placer mining claim known as the "Schley" placer mining claim, situate, lying and being in what is known as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and
10 as particularly described in plaintiff's complaint in Paragraph II, beginning with line 24 and to and including line 30 thereof; Defendant denies that the plaintiff is entitled to the possession of that certain placer mining claim known as the "Schley" placer mining claim, situate, lying and being in what is known as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and as particularly described in plaintiff's complaint in Paragraph II, beginning with line 24 and to and including line 30 thereof.

3. Defendant admits, as alleged in Paragraph III of said complaint, that it claims an estate and interest in the tract of land described in Paragraph II of said complaint adverse to the said plaintiff, and alleges that it claims an estate and interest in said tract of land adverse to the whole world; said defendant denies its said claim to said tract of land is without any right whatever, said defendant denies that it has not any estate, denies that it has not any right, denies that it has not any title, and denies that it has not any interest in the said land or premises; defendant denies that it has not any estate, denies that it has not any right, denies that it has not any title, denies that it has not any interest in or to any part of said land or premises.

4. Defendant admits the matters set forth in Paragraph IV of said complaint.

5. Defendant alleges that it is the owner, in possession and entitled to the possession of the lands and premises described in plaintiff's complaint filed herein; Defendant admits that unless re-
11 strained by an order of this Honorable Court, it will go upon said premises, erect buildings and other structures thereon, and erect a drilling rig to drill and bore for oil thereon; Defendant alleges that it will do any and all lawful acts incident to the ownership thereof, necessary for the use, holding and enjoyment thereof; Defendant denies that if it goes upon said premises, denies that if it erects buildings and other structures thereon, and denies that if it erects a drilling rig to drill and bore for oil thereon, that it will cause great and irreparable injury to said plaintiff, or any injury whatever, or at all.

Wherefore, Defendant prays judgment that said plaintiff take nothing by this action and that it have its costs of suit.

T. O. TOLAND,
ARTHUR H. BLANCHARD AND
DON G. BOWKER,
Attorneys for Defendant.

STATE OF CALIFORNIA,
County of Ventura, ss:

Arthur H. Blanchard, being duly sworn, says:

That he is one of the attorneys in the above entitled action for the above named defendant, Union Oil Company of California, a corporation; that he resides at the City of Santa Paula, in the
12 County of Ventura, State of California; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true; that said defendant is and all of the officers of said defendant are absent from said County of Ventura.

That the reasons why this affidavit of verification is not made by said defendant are the absence of said defendant and all of the officers thereof from said County of Ventura, as aforesaid, and that said defendant is a corporation and therefore unable to verify the same.

ARTHUR H. BLANCHARD.

Subscribed and sworn to before me this 26th day of November, 1910.

[SEAL.] DON G. BOWKER,
Notary Public in and for the County of Ventura, State of California.

(Endorsed:) Filed Nov. 26, 1910. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

13 In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Cross-complaint.

Comes now the defendant above named and for cause of action against the plaintiff herein makes and files this its cross-complaint, and for cause of action alleges:

1. That it is now and was at all times herein stated a corporation organized and existing under and by virtue of the laws of the State of California.

2. That said defendant and cross-complainant is and was at all times herein mentioned the owner, in the possession, and entitled to the possession of that certain real property and placer mining claim known as the "Rawley" Placer Mining Claim, situate, lying and being in the Little Sespe Petroleum Mining District, County of Ventura, State of California, and more particularly described as follows, to-wit:

14 Beginning at the southwest corner of the "Syracuse" placer mining claim; thence north 5280 feet to a monument of stone on the south line of the "Revelation" placer mining claim; thence west along the south line of the said "Revelation" placer mining claim 1320 feet to a monument of stone, located at the southwest corner of the said "Revelation" placer mining claim; thence north 5280 feet to a monument of stone, located on the north line of the "Baltimore" placer mining claim; thence east along the north line of said "Baltimore" placer mining claim 1320 feet to the place of beginning, and containing 160 acres of land more or less.

Said tract of land being so located that if the government survey were extended across the same it would lie wholly within Section 17, Township 5 North, Range 19 West, S. B. M., and being the same property described in plaintiff's complaint on file herein.

3. That said plaintiff claims an estate and interest in the above described tract of land adverse to the said defendant and cross-complainant; that the said claim of plaintiff is without any right whatever, and the said plaintiff has not any estate, right, title or interest whatever in the said land or premises, or any part thereof.

4. That the said property herein described is chiefly valuable for the petroleum oil and other minerals contained therein.

5. That the defendant is the owner, in the possession and entitled to the possession of that certain real property and placer mining claim known as the "Doe Flat" placer mining claim, which is located immediately west of and adjoining the said real property and placer mining claim hereinbefore described; that said defendant, through itself and its lessees, have, during the two years last past, done work upon said claim, to-wit: drilled an oil well thereon; that said work and labor of drilling said oil well will tend to the development and to determine the oil bearing character of the real property and placer mining claim hereinbefore described, and known as the "Rawley" Placer Mining Claim.

6. That the plaintiff herein, his agents and servants, during the past few days entered and went upon the said "Rawley" Placer Mining Claim, and are now upon said premises, and after making such entry upon said claim took possession of a portion thereof, and still remain upon said claim, and from said point repeatedly rolled rocks and stones and debris from said point upon the grade being erected on said premises by the defendant and cross-complainant herein, and by so doing interfered with and prevented the work of completing said rig grade on said premises by the defendant and cross-complainant herein and the erecting of a drilling rig thereon; that the plaintiff and cross-defendant herein threatens to and will unless restrained by an order of this Honorable Court, continue to go upon said premises and prevent and obstruct the defendant and cross-complainant herein from performing the labor hereinbefore mentioned and the assessment work upon said claim for the year 1910, to the great and irreparable injury of this cross-complainant and defendant herein; that the plaintiff threatens to and will, unless restrained by an order of this Honorable Superior Court, go upon said premises, erect buildings and other structures thereon, and erect a drilling rig to drill and bore for oil, to the great and irreparable injury of this cross-complainant and defendant.

Wherefore, Defendant and cross-complainant prays for judgment:

1. The plaintiff be required to set forth the nature of his claim, and that all adverse claims of the plaintiff be determined by a decree of this court;

2. That by said decree it be adjudged that the plaintiff has no estate or interest whatever in or to said land and placer mining claim in this — cross-complainant herein to said land and placer mining claim is good and valid;

3. That the plaintiff be restrained, pending the action, and upon the trial perpetually, from in any manner interfering with said property or entering upon or exercising acts of ownership over the same, or any part thereof, or mining in or extracting any oil or other minerals therefrom, and from in any manner interfering with the defendant's use, occupation and control of said premises, and that said defendant's title be quieted against the claim of the plaintiff and for

such other and further relief as may be proper in the premises, and for costs of suit.

T. O. TOLAND,
ARTHUR H. BLANCHARD AND
DON G. BOWKER,
Attorneys for Defendant and Cross-complainant.

17 STATE OF CALIFORNIA,
County of Ventura, ss:

Arthur H. Blanchard, being duly sworn, says: That he is one of the attorneys in the above-entitled action for the above named defendant, Union Oil Company of California, a corporation; that he resides at the City of Santa Paula, in the County of Ventura, State of California; that he has read the foregoing cross-complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true; that said defendant is and all of the officers of said defendant are absent from said County of Ventura.

That the reasons why this affidavit of verification is not made by said defendant are the absence of said defendant and all of the officers thereof from said County of Ventura, as aforesaid, and that said defendant is a corporation and therefore unable to verify the same.

ARTHUR H. BLANCHARD.

Subscribed and sworn to before me, this 26th day of November, 1910.

[SEAL.] DON G. BOWKER,
Notary Public in and for the County of Ventura, State of California.

(Endorsed:) Filed Nov. 26, 1910. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

18 In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Answer to Cross-complaint.

Comes now the plaintiff above named and answering the cross-complaint of defendant and cross-complaint filed herein, admits, denies and alleges as follows:

I.

Admits each and every allegation contained in Paragraph I of said cross-complaint.

II.

Denies that said defendant and cross-complainant is the owner or was at any of the times mentioned in said cross-complaint, the owner, or is in the possession or entitled to the possession of that certain real property or placer mining claim known as the "Rawley" placer mining claim situate, lying and being in the Little Sespe Petroleum Mining District, County of Ventura, State of California, and as particularly described in said cross-complaint in Paragraph II, beginning with line 25 and to and including line 33 thereof.

III.

Admits that plaintiff claims an estate and interest in the said tract of land particularly described in Paragraph II of said cross-complaint, adverse to the said defendant and cross-complainant and alleges that he claims an estate and interest in said tract of land adverse to all and every person whomsoever. Denies that his said claim is without any right whatever, and denies that he has not any estate, denies that he has not any right, denies that he has not any title, and denies that he has not any interest in the said land and premises.

IV.

Admits all of the allegations contained in Paragraph IV of said cross-complaint.

V.

Plaintiff has no knowledge or information sufficient to enable him to form a belief as to the truth of any or either of the allegations contained in Paragraph V of said cross-complaint and therefore he denies each and every of said allegations.

VI.

Admits that he, his agents and servants, have entered and gone upon the property described in the said cross-complaint as the "Rawley" placer mining claim, and are now upon said premises, and after making such entry upon said claim, took possession of a portion thereof, and of the whole thereof, and still remain upon said claim, but plaintiff alleges that he has been in the continuous possession and occupancy of said claim since February 5, 1910. Admits that rocks and stones and debris have been removed and allowed to fall in a canyon on said premises, where defendant and cross-complainant was attempting to enter upon said premises and construct a grade thereon, but denies that by said acts the work of defendant and cross-complainant has been interfered with. Admits that the plaintiff and cross-defendant herein will, unless restrained by an order of this Honorable Court, continue to go upon said premises, and will prevent and obstruct the defendant and cross-

complainant herein from performing the labor mentioned in said cross-complaint, but denies that the acts and things alleged in paragraph VI of said cross-complaint will cause great or irreparable or any injury to said defendant and cross-complainant. Admits that he will, unless restrained by an order of this Honorable Court, go upon said premises, and alleges that at the time of filing said cross-complaint, and for a long time prior thereto, and now, he was and is in the exclusive occupancy of said premises, that he has erected buildings and other structures thereon, and will erect a drilling rig to drill and bore for oil, and will drill and bore for oil, but denies that the acts and things alleged in Paragraph VI of said cross-complaint, or any of them, will cause, or do cause, great or irreparable or any injury to said defendant and cross-complainant.

Wherefore, plaintiff prays that said defendant and cross-
21 complainant take nothing by this action and that plaintiff have judgment as prayed for in his complaint on file in this cause.

And for costs of suit.

ALTON M. CATES,
Attorney for Plaintiff.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

S. R. Smith, being first duly sworn, says that he is the plaintiff in the above entitled action; that he has read the foregoing answer to defendant's and cross-complainant's cross-complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

S. R. SMITH.

Subscribed and sworn to before me this 7th day of December, 1910.

[SEAL.]

JENNIE SHUTT,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) Filed December 8, 1910. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

22 Friday, December 30, 1910.

Court meets at 11 o'clock A. M., present, Hon. Robert M. Clarke, Judge, J. B. McCloskey, Clerk, and E. G. McMartin, Sheriff.

S. R. SMITH
vs.
UNION OIL CO. OF CALIFORNIA.

The motion of the plaintiff herein to strike out the entire cross-complaint of the defendant, heretofore submitted to the court and

by the court taken under advisement is ordered and the same is hereby granted. The defendant excepts to the ruling of the court.
In the Superior Court of the County of Ventura, State of California.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Amended Complaint to Quiet Title and for Injunction.

Comes now the plaintiff and by leave of Court first had and obtained, files his amended complaint herein, and complaining of the defendant alleges:

23

I.

That the Union Oil Company of California is now, and was at all times herein stated, a corporation organized and existing under and by virtue of the laws of the State of California.

II.

That the plaintiff is the owner of, in the possession of, and entitled to the possession of that certain placer mining claim known as the "Schley" placer mining claim, situate, lying and being in what is known as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and more particularly described as follows, to-wit:

Beginning at the southwest corner of the "Syracuse" placer mining claim; thence north 5280 feet to a monument of stone on the south line of the "Revelation" placer mining claim; thence west along the south line of the said "Revelation" placer mining claim 1320 feet to a monument of stone, located at the southwest corner of the said "Revelation" placer mining claim; thence south 5280 feet to a monument of stone, located on the north line of the "Baltimore" placer mining claim; thence east along the north line of said "Baltimore" placer mining claim, 1320 feet to the place of beginning, and containing 160 acres of land more or less.

III.

That said defendant claims an estate and interest in the above described tract of land adverse to the said plaintiff; that the said claim of defendant is without any right whatever, and the said de-
24 fendant has not any estate, right, title or interest whatever in the said land or premises or any part thereof.

IV.

That the said property herein described is chiefly valuable for the petroleum oil and other minerals contained therein.

V.

That the defendant threatens to and will, unless restrained by an order of this Honorable Court, go upon said premises, erect buildings and other structures thereon, erect a drilling rig thereon and drill and bore for oil and take and remove oil therefrom to the great and irreparable injury of this plaintiff.

Wherefore, Plaintiff prays for judgment:

1. That defendant be required to set forth the nature of its claim and that all adverse claims of the defendant be determined by a decree of this court.

2. That by said decree it be adjudged that the defendant has no estate or interest whatever in or to said land in this complaint described, and that the right, title and interest of the plaintiff herein to said land is good and valid.

3. That the defendant be restrained pending the action, and upon the trial perpetually, from in any manner interfering with said property or entering upon or exercising acts of ownership over the same, or any part thereof, or mining in, or extracting any oil or other minerals therefrom and from in any manner interfering with plaintiff's use, occupation and control of said premises, and that plaintiff's title be quieted against the claim of the defendant, and for such other and further relief as may be proper in the premises.

And for costs of suit.

ALTON M. CATES,
Attorney for Plaintiff.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

S. R. Smith, being first duly sworn, says: That he is the plaintiff in the above entitled action; that he has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

S. R. SMITH.

Subscribed and sworn to before me, this 7th day of December, 1910.

[SEAL.] JENNIE SHUTT,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) Filed December 21, 1910. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

In the Supreme Court of the County of Ventura, State of California.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Answer to Amended Complaint.

Comes now the defendant above named and in answer to plaintiff's amended complaint herein admits, denies and alleges as follows, to-wit:

1. Admits all of the matters alleged and contained and set forth in Paragraph I of said amended complaint.

2. Defendant denies that the plaintiff is the owner of that certain placer mining claim known as the "Schley" placer mining claim, situate, lying and being in what is known as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and particularly described in plaintiff's amended complaint in Paragraph II, beginning with line 26 and to and including line 31 thereof; defendant denies that the plaintiff is in the possession of that certain placer mining claim known as the "Schley" placer mining claim, situate, lying and being in what is known as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and particularly described in plaintiff's amended complaint in Paragraph II, beginning with line 26 and to and including line 31 thereof; defendant denies that the plaintiff is entitled to the possession of that certain placer mining claim known as the "Schley" placer mining claim, situate, lying and being in what is known as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and as particularly described in plaintiff's Amended Complaint in Paragraph II, beginning with line 26 and to and including line 31 thereof:

3. Defendant admits, as alleged in Paragraph III of said Amended Complaint, that it claims an estate and interest in the tract of land described in Paragraph II of said Amended Complaint adverse to the said plaintiff, and alleges that it claims an estate and interest in said tract of land adverse to the whole world; said defendant denies that its said claim to said tract of land is without any right whatever; said defendant denies that it has not any estate; denies that it has not any right; denies that it has not any title, and denies that it has not any interest, in the said land and premises described in plaintiff's Amended Complaint filed herein; defendant denies that it has not any estate; denies that it has not any right; denies that it has not any title; and denies that it has not any interest in or to any part of said land or premises described in said Amended Complaint.

4. Defendant admits the matters set forth in Paragraph IV of said Amended Complaint.

5. Defendant alleges that it is the owner, in possession, and entitled to the possession of the lands and premises described in plain-

tiff's amended complaint filed herein; defendant admits that unless restrained by an order of this Honorable Court, it will go upon said premises, erect buildings and other structures thereon, and erect a drilling rig thereon and drill and bore for oil and take and remove oil therefrom; defendant alleges that it will do any and all lawful acts incident to the ownership thereof, necessary for the use, holding and enjoyment thereof; denies that if it erects buildings and other structures thereon, and denies that if it erects a drilling rig thereon and drills and bores for oil and takes and removes oil therefrom, that it will cause great and irreparable injury to said plaintiff, or any injury whatever, or at all.

6. Defendant alleges that it is the owner, in the possession and entitled to the possession of that certain real property and placer mining claim known as the "Rawley" placer mining claim; that said "Rawley" placer Mining Claim comprises the same real property and is the same identical property and Placer Mining Claim as that designated as the "Schley" Placer Mining Claim and referred to and described in plaintiff's amended complaint herein; defendant alleges that it is the owner, in the possession and entitled to the possession of that certain real property and placer mining claim known as the "Sampson" Placer Mining Claim, sometimes
29 known as and called the "Sulphur" Placer Mining Claim, which said claim is located immediately west of and adjoining the said "Rawley" Placer Mining Claim; defendant alleges that through itself and its lessees, it has done work upon said "Sampson" Placer Mining Claim, to-wit, drilled oil wells thereon; defendant alleges that through its lessees, it is now and ever since prior to the first day of January, 1910, has been engaged in the work of drilling an oil well on said "Sampson" Mining Claim; that said work of drilling said oil wells has tended and will tend to the development and to determine the oil-bearing character of the real property and placer mining claim known as the "Rawley" Placer Mining Claim.

Wherefore, defendant prays judgment:

1. That a decree of this Court be entered adjudging that the plaintiff has no estate or interest whatever in or to said land and placer mining claim described in his amended complaint, and in this answer designated as the "Rawley" Placer Mining Claim, and that the right, title and interest of the defendant herein to said land and placer mining claim is good and valid.

2. That the defendant's title be quieted against the claim of the plaintiff, and for such other and further relief as may be proper in the premises, and for costs of suit.

T. O. TOLAND,
A. H. BLANCHARD AND
DON G. BOWKER,
Attorneys for Defendant.

30 STATE OF CALIFORNIA,
County of Ventura, ss:

Arthur H. Blanchard, being duly sworn, says: That he is one of the attorneys in the foregoing entitled action for the foregoing

named defendant, Union Oil Company of California, a corporation; that he resides at the City of Santa Paula, in the County of Ventura, State of California; that he has read the foregoing answer to amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true; that said defendant is and all of the officers of said defendant are absent from said County of Ventura. That the reasons why this affidavit of verification is not made by said defendant are the absence of said defendant and all of its officers from said County of Ventura, as aforesaid, and that said defendant is a corporation and therefore unable to verify the same.

ARTHUR H. BLANCHARD.

Subscribed and sworn to before me, this 30th day of December, 1910.

[SEAL.] DON G. BOWKER,
Notary Public in and for the County of Ventura, State of California.

(Endorsed:) Filed Dec. 31, 1910. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

31 In the Superior Court of the County of Ventura, State of California.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Demurrer to Amended Complaint.

Comes now the defendant in the above-entitled action and demurs to plaintiff's amended complaint filed herein upon the following grounds, to-wit:

1. That said amended complaint does not state facts sufficient to constitute a cause of action.

2. That said amended complaint does not state facts sufficient upon which to grant a restraining order, injunction or other remedial relief, either during the pendency of the action, perpetually, or at all.

32 Wherefore, defendant asks that said action be dismissed and that it go hence with its costs of suit.

T. O. TOLAND,
A. H. BLANCHARD AND
DON G. BOWKER,
Attorneys for Defendant.

(Endorsed:) Filed Dec. 31, 1910. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

Tuesday, January 3, 1911.

Court meets at 10 o'clock A. M.; present Hon. Robert M. Clarke, Judge, J. B. McCloskey, Clerk and E. G. McMartin, Sheriff.

S. R. SMITH
vs.
UNION OIL COMPANY OF CAL.

Trial.

This is the time heretofore set for the trial of the above entitled matter. A. M. Cates, Esq., Attorney for the plaintiff, and Don G. Bowker, Arthur H. Blanchard and T. O. Toland, attorneys for the defendant, are present in court.

It is ordered that the defendant's demurrer to the amended complaint of the plaintiff, heretofore submitted to the court, be and the same is hereby overruled.

33 In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Amended Answer to Amended Complaint.

Comes now the defendant above named and upon leave of the Court first obtained makes answer to plaintiff's amended complaint herein, and admits, denies and alleges as follows, to-wit:

I.

Denies that at this time, or at the time of the commencement of this action, or at the time of the filing of said amended complaint herein, or at any other time, or at all, plaintiff is or was the owner, in the possession or entitled to the possession of the lands and premises described in said plaintiff's complaint, and called the "Schley" Placer Mining Claim, except that said defendant admits that immediately prior to the commencement of this action the plaintiff did wrongfully trespass and go upon a small portion of said lands not exceeding three acres in extent.

34 II.

This defendant admits and alleges that it claims an estate and interest and alleges that — all the dates and times herein mentioned it was and has been and still is, except as hereinabove stated, the owner, in the possession and entitled to the possession of the whole of said lands, and in that behalf further alleges that the plaintiff

is, was and has been at all the dates and times herein mentioned and at all times since and long prior to the first day of January, 1909, the owner, in the possession and entitled to the possession of that certain placer mining claim known as the "Rawley" Placer Mining Claim situate in what is known as the Little Sespe Petroleum Mining District, Ventura County, California, and particularly described as follows, to-wit:

Commencing at a mound of stone set at the Southeast corner of that certain placer mining claim hereinafter described known as the "Sulphur," and sometimes called the "Sampson" Placer Mining Claim, and running thence North along and with the East line of said "Sulphur" Placer Mining Claim: at 40.00 chains a mound of stone set at the North-east corner of said "Sulphur" Placer Mining Claim: at 80.00 chains to a mound of stone at the North-west corner of said "Rawley" Placer Mining Claim; thence East 20.00 chains to a mound of stone; thence South, parallel with said West line of said "Rawley" Claim, 80.00 chains to a mound of stone at the South-east corner thereof, the same being in the North line of the "Baltimore" Claim named in said complaint; and thence
35 West 20.00 chains to the point of commencement; and upon its information and belief this defendant alleges that the lands hereinabove described as comprised within said "Rawley" Claim are identical with the lands described in said amended complaint as constituting said pretended "Schley" Placer Mining Claim.

III.

And this defendant further answering alleges that at all the dates and times herein and in said amended complaint mentioned and ever since and long prior to the 1st day of January, 1908, this defendant was, has been and still is the owner, in the possession and entitled to the possession of that certain placer mining claim situate in said Little Sespe Petroleum Mining District, Ventura County, California, and described as follows, to-wit: Commencing at said mound of stone situate at the South-west corner of said "Rawley" Placer Mining Claim aforesaid, and running thence North along and with the West line of said Rawley Placer Mining claim 40.00 chains to said mound of stone therein; thence West 40.00 chains to a mound of stone; thence South 40.00 chains to a mound of stone; and thence East 40.00 chains: at about 34.50 chains a mound of stone set at the North-west corner of said "Baltimore" Placer Mining claim, and at 40.00 chains said mound of stone at said point of commencement, the same being known as and called the "Sulphur," and sometimes called the "Sampson" Placer Mining claim, and being a part of what would be Section 17, Township
5 North Range 19 West, S. B. B. & M. If the same were
36 surveyed public lands; and that the same adjoins and is contiguous to said "Rawley" Placer Mining claim, and is chiefly valuable for the petroleum and other mineral oils therein contained; that said defendant by and through itself and its lessees has at all the dates and times herein mentioned been in the pos-

session of said placer mining claim last named, and during the two years last past has done work upon the same, to-wit, has been sinking and drilling, and is still sinking and drilling a well thereon and therein for the development of petroleum oil therefrom, and therein and thereby has discovered such oil on and in said claim last named, and at all the dates and times mentioned in said amended complaint has been and still is engaged in the sinking of said well on and in said claim; that said work and labor of drilling said oil well tends to and will tend to the development and to determine the oil bearing character of the real property and placer mining claim hereinabove described and known as the "Rawley" Placer Mining claim.

That said defendant further alleges that at all the dates and times herein mentioned it was and still is the owner of that certain placer mining claim situate adjacent to said "Sampson" Placer Mining claim on the south, and lying and being contiguous to and with said "Sampson" Mining claim and said "Rawley" Placer Mining claim, and bounded on the East by said "Baltimore" Placer Mining claim, and containing 80.00 acres, and known as and
37 called the "Arizona" and sometimes known as and called the "Arcade" Placer Mining claim, and that said defendant has sunk and has thereon and therein a well for such petroleum oil, and in and by said oil has discovered and has a discovery of petroleum oil on and in said claim.

This defendant further alleges that all of the property and lands herein described are chiefly valuable for petroleum oil.

IV.

And this defendant further answering alleges that it intends to and will do any and all lawful acts incident to the ownership, possession and right of possession of the lands hereinabove described, including said "Rawley" Claim, necessary for the use, holding and enjoyment thereof, but denies that if it erects buildings and other structures on said "Rawley" Claim, and denies that if it erects a drilling rig thereon and drills and bores thereon and takes and removes oil therefrom it will thereby or at all cause great and irreparable injury, or any injury whatsoever to said plaintiff.

Wherefore, defendant prays judgment:

1. That a decree of this court be made and entered, adjudging that the plaintiff has no estate or interest whatever in or to the lands described herein, and particularly in or to the lands in this answer designated and described as the "Rawley" Placer Mining Claim, and that the right, title and interest of this defendant to said land and placer mining claim is good and valid and that this defendant is entitled to the possession thereof.

38 2. That said defendant's title be quieted against the claim

of the plaintiff, and for such other and further relief as may be proper in the premises, and for costs of suit.

T. O. TOLAND,
ARTHUR H. BLANCHARD AND
DON G. BOWKER,
Attorneys for Defendant.

STATE OF CALIFORNIA,
County of Ventura, ss:

Arthur H. Blanchard, being duly sworn, says: that he is one of the attorneys in the foregoing entitled action for the foregoing named defendant, Union Oil Company of California, a corporation; that he resides at the City of Santa Paula, in the County of Ventura, State of California; that he has read the foregoing amended answer to amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true; that said defendant is and all of the officers of said defendant are absent from said County of Ventura. That the reasons why this affidavit of verification is not made by said defendant are the absence of said defendant
39 and all of its officers from said County of Ventura, as aforesaid, and that said defendant is a corporation and therefore unable to verify the same.

ARTHUR H. BLANCHARD.

Subscribed and sworn to before me this 3rd day of January, 1911.

[SEAL.] DON G. BOWKER,
Notary Public in and for the County of Ventura, State of California.

(Endorsed:) Filed Jan. 3, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

40 In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial January 3, 1911, in said Superior Court, Honorable Robert M. Clarke, presiding. Alton M. Cates, Esq., appeared as attorney for plaintiff, and Don G. Bowker, Thomas O. Toland and Arthur H. Blanchard, appeared as attorneys for defendant. Evidence, oral and documentary, was adduced by the respective parties, and the cause submitted to the court for decision, a jury having been expressly waived by the parties to the

cause. The Court now being fully advised in the premises, finds the facts as follows:

Findings of Fact.

1. That plaintiff and seven associates, all of whom were citizens of the United States, on February 5, 1910, took steps to locate the "Schley" placer mining claim, situate in what is known
41 as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and more particularly described as follows, to-wit:

Beginning at the southwest corner of the "Syracuse" placer mining claim; thence North 5280 feet to a monument of stone on the south line of the "Revelation" placer mining claim; thence west along the south line of the said "Revelation" placer mining claim 1320 feet to a monument of stone, located at the southwest corner of the said "Revelation" placer mining claim; thence south 5280 feet to a monument of stone, located on the north line of the "Baltimore" placer mining claim; thence east along the north line of said "Baltimore" placer mining claim, 1320 feet to the place of beginning, and containing 160 acres of land more or less.

A notice of location was posted on the ground by J. P. Brunton, agent for the locators, on said February 5, 1910, and on February 28, 1910, a copy thereof was recorded in the office of the County Recorder of Ventura County, California, in Book 19 of Mining Claims, at page 255. That simultaneously with the posting of said notice of location, the said placer mining claim was marked by erecting monuments upon its exterior boundaries, so that its boundaries could be readily traced.

2. That thereafter, and on March 8, 1910, the seven colocators of plaintiff joined in a quit-claim deed to the plaintiff, of said "Schley" placer mining claim, which said quit-claim deed was thereafter and on November 16, 1910, duly recorded in the
42 office of the County Recorder of said County of Ventura, State of California, in Book 100 of Deeds, at page 271.

3. That after said location notice was posted and the boundaries of said claim marked upon the ground, plaintiff and his colocators went into occupancy of said "Schley" placer mining claim, and remained in occupancy thereof, until on or about April 10, 1910, when one Reynolds and his associates incorporated as Middle Sespe Oil Company, with the consent and by agreement of plaintiff, went into occupancy of said "Schley" placer mining claim, and remained in occupancy thereof until the latter part of the month of August, 1910. That thereafter and on the 5th day of October, 1910, plaintiff made an agreement with O. J. Stowe, by which said agreement Stowe agreed to go into immediate possession and occupancy of said placer mining claim, and with all due diligence proceed with the drilling of a well to a depth of two thousand (2,000) feet, or to such less depth as might be necessary to find oil in paying quantities. That on or about the 7th day of October, 1910, said Stowe went upon said placer mining claim, made a location for a well thereon, purchased

the lumber that was on the claim, and proceeded to build a wood rig, bunk-house, cook-house, as well as purchase rig irons for a standard oil well drilling rig, and expended more than two thousand ($2,000.00) dollars. That ever since said 7th day of October, 1910, said Stowe has been in the continuous occupancy of said placer mining claim, and has continuously and diligently prosecuted the work toward a discovery of oil therein and thereon.

43 4. That on March 5, 1883, the same area herein above described as the "Schley" placer mining claim, was entered upon by Richard Gird and seven colocators, all of whom were citizens of the United States, on which said date said Gird and his colocators, posted a location notice thereon, and gave the name of "Rawley" to said tract of land. That simultaneously with the posting of said location notice, the boundaries of said claim were marked with monuments, so that the same could be readily traced, and a copy of said location notice was duly recorded in the District Records of the said Little Sespe Petroleum Mining District, Ventura County, California. That thereafter and on September 18, 1895, said Gird and his colocators joined in a quit-claim deed of the same to the Sespe Oil Company, and by mesne conveyance the rights of the original locators became vested in the Union Oil Company of California.

5. That said defendant Union Oil Company of California, was on the said 5th day of February, 1910, the date upon which the plaintiff and his colocators posted the notice of location of said "Schley" placer mining claim, and thereafter and including the 25th day of November, 1910, was, through its lessee, Stockholders' Oil Company, causing to be drilled a well on the "Sampson" claim, adjoining the said "Schley" placer mining claim on the west. That in 1889 a producing well was drilled on the "Arizona" claim, by the predecessors in interest of defendant, but said well was abandoned in 1900.

44 6. That no drilling or other development work was ever done upon the said tract of land known as the "Schley" or "Rawley" placer mining claim, by defendant, Union Oil Company of California, with the exception of a rig grade having been made by L. A. Mitchell and Thomas A. Slocum, lessees of said defendant, in December, 1909, the cost of which said rig grade did not exceed the sum of one hundred dollars.

Conclusions of Law.

As conclusions of law from the foregoing facts, the Court decides:

1. That plaintiff is entitled to judgment against said defendant quieting his title to said "Schley" placer mining claim, as against defendant and all persons claiming under it.

2. That defendant be enjoined at all times hereafter from in any manner interfering with said "Schley" placer mining claim, or entering upon or exercising acts of ownership over the same, or any part thereof, or mining in or extracting any oil or other minerals

therefrom, and from in any manner interfering with plaintiff's use, occupation and control of said "Schley" placer mining claim.

3. That plaintiff is entitled to judgment against defendant for his costs herein expended.

Dated February 28, 1911.

ROBERT M. CLARKE, *Judge.*

(Endorsed:) Filed February 28, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

45 In the Superior Court of the County of Ventura, State of California.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Judgment.

This cause was tried before the above Court, Honorable Robert M. Clarke, Judge presiding, on the amended complaint of plaintiff and amended answer thereto of defendant. Evidence, oral and documentary, was introduced by the respective parties, and after argument of counsel, the cause was submitted to the court for decision and after due deliberation thereon the court files its findings and decision in writing, and orders that judgment be entered herein in favor of plaintiff in accordance therewith;

Wherefore, by reason of the law and the findings and decision aforesaid,

It is Ordered, Adjudged and Decreed, that the title of
46 plaintiff, his heirs and assigns, as owner of that certain placer mining claim known as the "Schley," situate, lying and being in what is known as the Little Sespe Petroleum Mining District, County of Ventura, State of California, and more particularly described as follows, to-wit:

Beginning at the southwest corner of the "Syracuse" placer mining claim; thence north 5280 feet to a monument of stone on the south line of the "Revelation" placer mining claim; thence west along the south line of the said "Revelation" placer mining claim 1320 feet to a monument of stone, located at the southwest corner of the said "Revelation" placer mining claim; thence south 5280 feet to a monument of stone, located on the north line of the "Baltimore" placer mining claim; thence east along the north line of said "Baltimore" placer mining claim, 1320 feet to the place of beginning, and containing 160 acres of land more or less.

be, and the same is hereby quieted as against defendant and all persons claiming or to claim, by, from or under it, and that defendant be, and it is hereby enjoined at all times hereafter, from in any manner interfering with said above described placer mining claim or entering upon or exercising acts of ownership over the same, or any

part thereof, or mining or extracting any oil or other minerals therefrom, and from in any manner interfering with plaintiff's use, occupation and control of said premises; and that a writ of injunction so commanding be issued out of the office of the clerk of said Superior Court and under the seal thereof.

That plaintiff have and recover from defendant his costs
47 and disbursements incurred in this action, amounting to the sum of $59.60.

Dated February 28th, 1911.

ROBERT M. CLARKE, *Judge*.

(Endorsed:) Filed February 28, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Notice of Intention to Move for New Trial.

To the plaintiff, S. R. Smith, and his attorney, Alton M. Cates, Esq.:

48 Please take notice that the defendant above named intends to move the Court for a new trial in this case, upon the following grounds, viz:

1. Newly discovered evidence material to the defendant, which it could not with reasonable diligence have discovered and produced at the trial.
2. Insufficiency of the evidence to justify such decision.
3. That said decision is against the evidence.
4. That such decision is against law.
5. Errors in law occurring at the trial and excepted to by the defendant.

Said motion will be made upon affidavit hereafter to be filed and served upon you; also upon a bill of exceptions hereafter to be prepared, served and filed; also upon a statement of the case hereafter to be prepared.

T. O. TOLAND,
A. H. BLANCHARD AND
DON G. BOWKER,
Attorneys for Defendant.

(Endorsed:) Filed Mar. 11, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

49 In the Superior Court of Ventura County, California.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Statement on Motion for New Trial, Including Specifications of Insufficiency of Evidence and Errors of Law.

The above entitled cause came on regularly for trial on January 2nd, 1910, at 10 A. M., before the Court, without a jury, the plaintiff being represented by Alton M. Cates, Esq., and the defendant by Messrs. Don G. Bowker, Arthur H. Blanchard and Thomas O. Toland.

The following evidence was introduced, proceedings had, and stipulations made, to-wit:

S. R. SMITH, the plaintiff being first duly sworn, as a witness in his own behalf, testified as follows:—

I am the plaintiff, I reside in Los Angeles, am fifty years old, and am a manufacturer of orange wraps for the Floriston Pulp & Paper Company.

On February 5th, 1910, after myself and others had posted a location notice on the property in question and recorded it, we put J. P. Brunton in possession, bought a carload of lumber, and shipped it up there.

50 After Mr. Brunton took possession of the property he did work in making roads, so we could get in with the lumber, which was shipped by us to Fillmore, whence it was hauled on the ground, put on the place. I do not know exactly how much there was of it. I think Brunton remained on the property until about the 7th or 8th of April.

At that time we made a sort of compromise deal with Mr. L. H. Mitchell in regard to the property. Mr. Mitchell represented to us that he also had a claim on this property, which was not known to me before this date, and we negotiated for several weeks with Mr. Mitchell in regard to taking over this property, and we made a compromise deal in which Mr. Mitchell said that he was out and injured if we went on with this property; that he also had a lease on this property from the Union Oil Company. And we made a deal with Mr. Mitchell in which we were to have 75,000 shares of the company which he was to organize. He had parties who would drill a well, organize a company and go ahead with it. During that time, from April 7th or 8th, I don't think Mr. Brunton was in possession of the property.

Plaintiff's counsel here admits: That the so-called compromise with Mitchell was not in writing, was only conditional and was never consummated, was in fact merely negotiation.

Witness Smith continues: After the negotiations with Mitchell were entered into Brunton went back and took possession of

51 the property, went on the property, and I think did some more road work. After that time we made up our mind if the other parties didn't do as they had agreed in our proposed contract that we would put down a well ourselves.

The compromise agreement was not consummated. The negotiations therefore with Mitchell were called off about the 14th or 15th of August. I was on a vacation for five or six weeks, and upon my return we made negotiations for Mr. Stowe—Captain O. J. Stowe—to put down a well on the property. I took possession.

"It was very soon afterwards. I don't know just when. No, I don't remember the date. I think it was quite soon after I got back sometime after the 15th of September I should think. I would not say the exact day. Captain Stowe has occupied the property under that agreement ever since. There was an interval from the time he got his lumber on the property, I don't know just how long it was. I am familiar with the property. Yes, I have seen the property and have been on it within a reasonable time past; within the last thirty or forty days, I think. I don't remember the date. At that time there was a derrick on the property and lumber enough, I think there was lumber enough to complete the rig, bunk-houses and other property. There were houses built on the property.

Cross-examination by Mr. Bowker:

I put Brunton on the claim at the time the notice was filed. Well, there wasn't exactly a salary arranged for, but I sent him a check for $200 at one time. We have not had a settlement complete in
52 regard to his services yet. He didn't have any interest in the claim,—no more than working on a salary. This carload of lumber I purchased from the Ganahl Lumber Company. I don't remember the date, it was soon after our original locations were filed. It was shipped immediately to Fillmore. I don't know how many feet I purchased; I have not got the invoice of it yet. I don't remember. I paid something over $300.00 or $350 besides freight I think, for the lumber. The lumber I purchased was suitable for bunkhouses and a rig.

Q. For $350?

A. I say I don't know the exact amount. It was something over that. I don't know how much. I don't know that it was a full car of lumber, but that was what the invoice amounted to.

Q. You purchased enough lumber to erect rigs and bunkhouses?

A. I think that was the estimate.

Q. Did you buy any rig timbers?

A. No heavy timbers.

Q. How did you build a rig without the heavy timbers?

A. Did that later.

Q. Did you afterwards buy heavy timbers?

A. No, sir, we did not.

Q. You didn't buy any heavy timbers at all?

A. The first lumber was for the bunkhouse and enough to put up the derrick, but not for the full rig. We would probably have made another shipment of lumber, after we had erected part of

53 the derrick. I have been on the claim twice. I don't remember the date of the first time, I couldn't give the date. It was several weeks after the location. I wasn't there when the location was made by Jim Brunton. He cleared the brush, made a road up over the point of the hill that leads up to the bunkhouse. I should say the road was several hundred feet, but not leading clear across the claim. It was near the Southwestern corner, passes from the West across to the East, but I don't think clear across. I paid for the building of this road. There has never been a full settlement yet. I sent up money for the work. None of it was paid by the Little Sespe Oil Company that I know of. Neither claim that I own adjoining this had any interest in it. The Combination Light Oil Company which had an interest in it was West, but not adjoining this claim.

Mr. Brunton attended to hauling of the lumber that I purchased, and shipped out there. I don't know what teams hauled it. Brunton was my agent and attended to this for me

The forepart of what I have told before I went on the ground is hearsay. The first time I was there I was on the ground one forenoon. I don't know how long. The second time I was on it one forenoon also. I didn't go all over it. I was on the Southwestern part down where the improvements were on. Those were the only two times that I have been on it.

54 Q. Most of the Statements that you have made here of work there, of possession of this claim, and who was there and the nature of the work and the building of the derrick is hearsay with you?

A. No. I have seen the derrick built, and it was put up since I was there from the first time and the second. It was all erected when I was there the second time.

I don't know how many feet of lumber I shipped up there. I have no shipping bill with me. It is filed in Los Angeles. I sent the lumber up there chiefly for the bunk-house. I did not send up any shingles and shakes. Yes there were some shingles covering buildings but there was other material. I think I kept men there until long about the 7th or 8th of April, 1910. Up to that time the work that had been done was just cutting brush and building a road. I saw the work that had been done later, but I wasn't there when it was done. It consisted up to April 7th and 8th of clearing brush and digging a road so that a wagon could go over it.

Q. How far out of the claim?

A. I told you I didn't know, several hundred feet.

Yes, I stated that there were some negotiations with one Mitchell for a compromise.

Q. How did you come to make this location there, Mr. Smith?

A. It was made by Mr. Brunton stating that the property was open for location; that there had been no work done on it, no im-

55 provements. Mr. Brunton was not one of the locators, he simply called our attention to the fact.

Q. No arrangement of any interest that he was to have in this claim?

A. No more than he had a salary looking after it.

He was to go ahead, do the work and manage the claim for me. He operated as my agent in locating the claim. Mr. Brunton said that the whole country had been located a number of years before, but abandoned, was the impression that I got from him.

I commenced negotiations with Mitchell in April, 1910, but had no negotiations with any other person. I had none whatever with Reynolds or Mann—only with Mitchell. He told us about the forepart of April, he had a lease from the Union Oil Company. He did not show it to us. I never saw it, nor knew the terms of it. Upon his statement to me I entered into negotiations and was willing to make certain concessions to him, because he said he was injured by us taking possession of this property, and being on it because he had already been out some money with the property. Yes, at the time I entered into negotiations with Mitchell, Brunton left the property and remained away until I think it was about the 15th of August, before I had started on my vacation—when Mr. Mitchell said that Reynolds and Mann could not live up to the agreement. I believe that Reynolds and Mann were the Middle Sespe Oil Company.

Q. As a matter of fact you have not been in very close touch with this claim, have you?

56 A. Yes, sir, but I didn't pay much attention to that matter, because it didn't materialize, and I didn't try to remember it because it was not very material.

I don't think that any person in my employ was on that claim from the first of April to the middle of August—the 7th of August, I think it was. After that I was away for some five or six weeks on my vacation. On my return I made certain negotiations with Captain O. J. Stowe, that were pending during my vacation through the attorney, Mr. Cates.

Q. They were not consummated until your return?

A. I don't remember the date. I will have to refer that to the attorney. Brunton was on the ground awhile after the lease was returned from Mitchell, but I don't know how long. I mean after the proposed lease or proposed contract was returned from Mitchell. Our idea when we first went in there was to put down a well. Mr. Brunton was to superintend a well and do the drilling, and the matter came up with Mr. Mitchell that we stopped proceedings.

I have a contract, not merely a conditional arrangement, with Captain Stowe. I think the contract is delivered. I left it to the attorney. I believe it is. He drew up the papers. It is in escrow.

Q. It is conditional? If certain things are fulfilled the contract is to be delivered, the negotiations with Mr. Stowe?

A. Those negotiations are completed. He is to do his part of the work to make it complete.

—. ——.

A. Have I been in pursuit of capital to take the responsi-
57 bility of drilling this well? I could have put down the well.

I would have put it down had it not been for the statement that he was in earnest. He got that compromise for his benefit.

Yes it was two months afterwards.

Q. During the first two months you simply cut some brush on the claim?

A. After that time I had other matters come up and I decided not to put down this well and made the arrangements with Mr. Stowe.

No, sir, I never purchased any heavy timbers for that rig out there, that is not beam timbers or nothing suitable for the heaviest rig.

Yes, I think there was lumber put on the ground out there, by Mitchell or Reynolds or Mann. I understand they moved it off the property; that is simply my information. I don't know it of my own knowledge. I understand that Reynolds and Mann sold their lumber to other parties after they gave up the proposition.

The legal part of these matters has been in Mr. Cates' hands and the main part on the land has been in Mr. Brunton's hands.

Yes, I said that after the location of that mining claim I went into possession, erected a tent, established a camp, and built a wagon road from the main traveled road to Squaw Flat in a general Northeasterly direction to the westerly line of said claim and paid one-half the costs of building a wagon road crossing said claim, the other half
58 of said costs being paid by the Middle Sespe Company.

The Combination Light Oil Company claim is West of the Rawley claim and West of where the Stockholders Oil Company is drilling.

I had no interest in any claim North of the Rawley or Schley at the time the Schley was located. There were no negotiations pending for the purchase of the property to the North or East of the Schley at the time I was building the road, nor have I any interest in any such claim now.

Mr. Cates: The Combination Light Oil Company claims the Revelation claim which is immediately North of the Schley.

The Witness: It is West is it not?

Mr. Cates: No, it is not.

By Mr. Bowker:

Q. Did you have this interest in this Combination Light Oil Company at the time this road was being constructed?

A. I will have to refer that to the attorney. I don't remember the dates of the filings, but I don't think we had.

I think I got the interest in the Combination during the Summer. I don't remember. There were no negotiations pending at the time this road was being built for the purchase of this Combination claim. I did not authorize my agent Mr. Brunton to make statements that I was wanting to get across this claim, built this road across there for the purpose of getting on to the Revelation or Combination,
59 or any other claim North or East. Those were not pending at that time at all. I did not instruct him to give any such orders or make any request to get across the Rawley claim for the purpose of getting on to the property owned by me. This road was not built so far as I know for the purpose of getting on to some other claim than the Schley. That road that was built on the Schley goes right up to the property and no where else. I guess it goes clear

across it. The derrick is located near the Southwest part of it. The road was carried to the East line because the bunk-houses are to that side. The road was not necessarily built for the men to walk on. There is a road quite a distance on to the land up to the derrick.

In April last year the Bruntons were not doing any work for me on any other claim in that vicinity or neighborhood; they worked only on the Schley. I had no one at all on the claim at my expense or doing work, except Brunton, from the location down to the 7th or 8th of April, and until after I made these arrangements with Captain Stowe. I told you I can't remember the exact time when Captain Stowe went upon the property. If I stated in the affidavit that it was the early part of October, 1910, I think it was along about that time, but I don't remember the date.

Q. Then from the first of April until the fifth of October, you had no person there on the property?

A. No more than Mr. Mitchell, through his agents, Reynolds and Mann, were putting lumber on the ground.

I couldn't say without looking at the records how much
60 money I paid Brunton for the work he did on the claim from February to April. I paid for the lumber and paid the freight. I paid Mr. Brunton a check for $200 at one time. That is about as far as I know, without looking it up. From April until Captain Stowe went upon the ground I made no expenditure at all. It has not been necessary that I should make any since. Mr. Stowe is spending money on the property through an arrangement with me.

Redirect examination.

I had no interest in any adjoining property at the time this property was located. The work done on the East or North or South or West of the Schley. Yes, I stated that I had an interest in the Combination, but that does not join this property as I understand. The interest I have is represented by stock.

I don't claim any interest in the land, either a possessory right or other. It is only in stock.

I gave up possession of the property, gave up the occupancy and kept no one in occupancy of it from the 7th or 8th of April until negotiations were entered into with Captain Stowe, because Mr. Mitchell gave me to unedrstand in good faith that he would go ahead, through Reynolds and Mann, his agents, and develop the property, and I took it for granted that he would do so. Otherwise I would have put down a well myself and never made any such arrangements.

That was in the nature of a compromise agreement.

61 Recross-examination:

I will leave it to the attorney whether I have any stock in the Stowe Light Oil Company, or whether I have only an arrangement which is in escrow. The attorney has those matters in hands. The agreement I know is in escrow.

Redirect examination:

I know the agreement was executed, the papers conveying posses-

sory title are put with the bank and held for delivery under certain conditions.

J. P. BRUNTON, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is James P. Brunton; my age 37; my residence Los Angeles; occupation oil driller—practical oil man. I have been engaged in the oil business practically all of my life.

No not thirty years out of the thirty-seven, but I was raised in an oil district and went to work teaming in the oil field and stayed with it ever since. I was twelve years old. I have done almost every kind of work. Teaming, dressing tools, drilling, superintending, perhaps promoted a little, and all of it. That was in the East. Have been here fourteen years, and most of that time have been engaged in the oil business. A portion of that time have been engaged in the actual drilling of oil wells in different parts of California. I am not positive where I was on the 5th of February, 1910.

62 I believe I was on the Schley claim doing work. I don't remember the date of posting the notice of location on the Schley claim. The notice of location is in my handwriting.

Mr. Cates: It is dated February 5th, 1910.

Witness: I posted it and sent it for record or caused it to be sent. My recollection of that is not just fresh. Yes, I occupied the property. My memory isn't fresh on those things at the present time, the occurring, all about that, the time it was located, I told in the previous hearing here.

I went in, yes, as superintendent for Mr. S. R. Smith.

Q. How long did you stay in occupancy of the property Mr. Brunton?

A. My recollection from those dates are no—I can't recall it to memory, but until I was authorized by Mr. Smith or some of his representatives that there had been a deal made.

Yes, I remained in occupancy as the agent of Mr. Smith and as his agent I posted the location notice personally, and marked the boundaries.

I believe Mr. Smith's representative authorized me to give up the occupancy of the property. I don't remember the exact date of that. I was given instructions to go in there. I don't remember how long I remained there.

While I was in occupancy of the property I made a road through it, made a portion of a rig grade, grade for the tent camp where I first put it, and I cut a road through the property in order

63 to get the bunkhouses back under some trees where I had some shade where the trail went through the property to make a nice camp location there. A portion of the work was paid for by plaintiff and a portion charged to the Little Sespe Oil Company, which claimed what used to be known as the "Syracuse" claim East of the Schley. I didn't erect any structures upon the property at that time—simply the camp.

After I had been in occupancy for a time I had instructions to come away. While I was there I occupied the property as agent

of the plaintiff. My instructions while there relative as to what should be done upon the property were given me either by Mr. S. R. Smith, or his attorney. There was nobody in occupancy of the property when I posted the notice of location on it. I had been on the property or across it more than once before February 5th, 1910.

Plaintiff's Exhibit "1" which you now show me is all in my handwriting, except the typewriting. The date there written, February 5th, 1910, is the date of the location or the date of the posting, rather. In fact the names were wrote on the property. Absolutely there was no one else in occupancy of the property when the notice was posted. I had been out there prior to February 5th, 1910. The condition of this particular piece of property was that there were no indications of anything being done on the property, it looked to me, for a term of years with the exceptions of a little bit of digging down in the southwesterly portion, and it was a very small
64 amount. No person warned me not to locate the property when I posted the notice and marked the boundaries. I had been over almost every acre of it. There wasn't ten acres on the property that I hadn't been over prior to February 5th, 1910. I didn't have to remove any body from the property in order to go onto it. Yes there was some little work done near the southwest corner of the property. There was a little bit of trail made up the canyon. There was a little bit of work had run over the line. Well, the work that was done on the property, I believe I stated heretofore, that there wasn't more than Ten Dollars' worth of work on the property.

I don't know anything but hearsay about any compromise agreement that was made by the plaintiff. I know Captain Stowe very well.

I have seen this property lately within the last fifteen days. I have probably seen it about thirty days before that. I can't remember the dates, but I have seen it various times, probably forty times since the first of October, 1910. I have been in the district or neighborhood a great deal since then. I saw and was on this property just prior to the filing of the complaint in this action. At that time there was the greater portion of a standard drilling rig, part of it erected, on the property, and the bunk-houses and cook-house. Captain Stowe's representatives were in possession. I was on the property with Captain Stowe. He was preparing to get his well in shape to drill, the derrick up, giving instructions to the men. I was present when he did so. I have been engaged in the oil busi-
65 ness in Ventura County in the section known as the Little Sespe between two and three years. That is, I first went in there between two and three years ago. I did various kinds of work. Drilling part of the time, laid pipe lines, worked at most every kind of work pertaining to the development of oil property on the Cosmopolitan and Mutual claims. I entered and posted the location notice upon this property and marked its boundaries in the daytime, in plain sight of anybody who might have wanted to see me. I entered peaceably. I mean without the use of force, to get on the property.

Cross-examination:

Referring to plaintiff's Exhibit No. 1, the words and figures: "Friday, February 3, 1910" at the top is my writing—scribbling rather. I wrote those names that are signed there as locators. At the time I did so I was there upon the ground and posted this notice. No one was with me. My recollection is not clear whether I was doing anything else besides posting this notice on that day. I don't remember what I was doing other than that. I took possession of the property recently after that; that is I went in and took some men and came in there and started to grading, and making roads, cutting away brush and then making roads through the property.

That was recently after the claim was located. We went into possession of it within a few days.

Q. How many days?

A. Well, I was there until I was informed that there had been a deal made with Mr. Mitchell and to come away. I don't
66 know how long that was. I don't remember how long that was after posting the notice before I went into possession. I have not got the time here, but I should judge not more than a few days, maybe not more than five days—maybe not more than three days. In doing that I represented the plaintiff—was his agent. Yes, I have talked with Mr. Smith about working and taking charge of this property, but not before we located.

The Witness: I will have to change that. Yes, I had talked with Mr. Smith and told him that property was, in my opinion, open for location; that there had been nothing done on it for a term of years.

Q. You remember of hearing him say that when he was on the stand here.

A. No, I told him that. He was not familiar with that property. I caused him to be interested in it in the first place. He wanted to take it for himself, and Mr. Smith is a man that can drill any oil well that is necessary to be drilled up there, and that was his intention, to form a company and go ahead and drill the property.

In locating the property I represented him, was working for him as his agent. In posting the notice I posted for Mr. Smith and his associates. I had talked with most of them, previous to the time it was located when I used their names. E. R. Smith is, I believe B. R. Smith, and he is a brother of S. R. Smith, I believe, and lives in Los Angeles, I think, but where I couldn't tell you. I never did see him I guess.

H. L. Emerson is a man that used to be in business at Los
67 Angeles, and lived there at that time. I am very well acquainted with him. I couldn't give his residence number. He used to be in the real estate business. I have known him for a long time. I saw him in the Brunton Company's office at 209-10 Stimson Building, Los Angeles, or in the Currier Building at Mr. Cates' office. I couldn't remember what particular place I saw him about this business. I have talked with him at various times at Mr. Cates' and the Brunton Company's office.

Q. About this business?

A. About——

Q. Locating this claim?

A. Locating various claims.

I told you I couldn't remember exactly at what date it was. I was in Los Angeles, previous to February 5th, 1910, when it was located.

Q. How did you happen to talk with him?

A. As I said some time ago, the land was open in my opinion for location. There was no one in possession of the property at the time, and it had no appearance of any work being done on it for a term of years, as near as I could judge. That was why I talked with him in regard to it.

Mr. C. French is a carpenter in Los Angeles. I talked with him about the location of this claim about the same time. I didn't go around and meet them. I met them and other people. I am acquainted with almost all of them, and I meet them every few days.

Oscar Beyrle is another business man in Los Angeles,
68 whom I saw and talked with about this location.

R. A. Steele lives in the west side of Los Angeles. I had talked with him many times about properties. He used to do work with me over in the middle of the Sespe District. He said that he wanted to get into something.

Yes, I talked to him about that or any claim. He wanted any claim he could get hold of.

A. McMillen is a lady in Los Angeles. I talked with her before locating the claim. I went around and looked her up.

Q. How is it that you are not one of the locators, Mr. Brunton?

Mr. Cates: Objected to as incompetent, irrelevant and immaterial, not proper cross-examination.

The Court: Sustained.

To which ruling and order of the Court the defendant duly excepted, and herein assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 1.)

Yes, I marked the boundaries of the claim. I had them surveyed later on. I can't give you the date as to that, because I thought this all came up before. I told it in the other hearing. I supposed you had a record of it here. I could have got the dates when these things were all done. I marked the boundary after the claim was located. Put up stone monuments.

Q. You found that the monuments that were there were reasonably correct didn't you?

69 A. Some of them. There were some monuments in that district.

Q. I am referring to this claim now, Mr. Brunton.

A. My recollection of those are not just exactly clear. Some of them—I have surveyed considerable of the land in there. Some of them came within one foot and some of them would be three or four feet off, so J. B. Murray's survey, the man that I was assisting that was doing the work.

Q. The monuments that were there were near enough correct to be detected, were they not?

A. There was one monument on the southwesterly corner, but there was no monument on the southeast portion of it, and other property had been monumented in the northeast corner of it, but there had been some stone scattered around, but I should judge there had been something there. There was no monument there that was—my recollection of that is not right. There was one or two, but I know that there was one or two corners that didn't have any, on this particular Schley, the Rawley claim. There was a monument at the Southwest corner and at the Southeast corner, there was no monument there that I found. I should judge that years previous to that time there had been some stone piled up at the Northeast corner, and the other corner there was nothing that I found.

Q. Did you adopt the Southwest corner monument as yours?

A. Well, it was practically—I don't remember whether I put a new monument near by or not. We surveyed the property. We started in from the mineral monument at Tar Creek and we went and surveyed it clear through. My recollection of that is not clear, but I did survey it and helped set the corners.

70

Q. What is your answer as to whether you adopted that monument or not?

The Court: The Southwest corner monument, did you take the one that you found there or did you take a new one?

A. My recollection of that is not right, but I surveyed the monument. Some we changed a little. I don't remember. That is all unsurveyed land in there. There was some stone there at the Northeast corner. I couldn't say that it was a monument, but I suppose at some time someone had a monument in there and we set that where the surveyor placed his stick, and it came out in the neighborhood *or* where the old monument appeared to have been.

I suppose I knew that was called the Rawley claim at the time. I had seen a map of that country. I don't know that I did, but I had seen a map previous to that time. I was familiar with that country back there, had been in it for some time and had been looking through the country. I don't believe I was working on the Syracuse to the East.

Q. Had you been working there?

A. I don't remember when I commenced work on there, but I went back through that district for the purpose of picking up something that the law hadn't been complied with.

71

I don't remember when I was working on the Syracuse. Yes, I remember that I located this claim February 5th, 1910.

Q. Was it before that or after that that you worked on the Syracuse?

A. Well, about the same time we had—there was some work done on the Syracuse a few days after this road had been put through. That was after I posted the notice on the Schley.

Oh, the work was practically done for some time. I told you that I don't remember as to the time the road was built. It was after February 5th. It would be just a guess if I did do it. I put up a tent camp on the Schley claim recently after the location. We had to brush out to get the tent camp in. A portion of the road was built before the tent went in and a portion afterwards. We still kept working. We had to brush out a place and grade some to get our camp in. I should judge the rig site that I have spoken of was one hundred yards from the West line of the Schley or Rawley claim, something like 300 feet. The place where I say I put up the tent camp is practically the same distance from the rig site and about 100 yards from the West side of the claim, it is just below the rig, towards the South, where the derrick is now sitting. At that time the camp was South of the rig. It has been moved and there is no camp there now. The camp stayed there until I was notified to come away from there by Mr. Smith's representatives, or Mr. Cates, or some of them. I believe Mr. Smith's attorney sent the notice.

72 That road is built almost across the Schley claim. I didn't measure it. I cut it in as a business proposition when a man is going through so that he can get through the district. There is a portion of it that didn't need the road cut on the east line of it, if my recollection is right.

Q. But it made an open road to the Syracuse.

A. There is one there almost to it. I don't think it is entirely open yet.

I don't know that there is a little strip between the lines that is not quite open. I am unable to state when that portion of the road on the East side, whether before or after I posted the notice of the Schley claim, was built in the first place. My brother had charge of the Syracuse claim at that time and I done some work in there. I cut the roads through the Schley claim for the plaintiff, after I posted the notice.

Redirect examination:

Q. Did you intend to say in your cross-examination that you located this property as the agent of Mr. Smith?

A. And his associates. One man—Mr. Smith didn't have the power for all of these locators.

Q. I understand your answer to be that you located it as the agent of Mr. Smith and his associates.

A. Yes, sir.

Mr. Toland: I move to strike the answer out on the ground that he cannot prove the agency of the associates that way.

Mr. Cates limits the testimony so that it shall not have the effect of proving the agency of the associates.

73 The Witness: I know the number of persons that can locate a certain number of acres, and I certainly know that one person cannot locate one hundred and sixty acres.

O. J. STOWE, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

I reside in Ventura; am in fruit business and am forty-nine years old. I am familiar with the property here known as the Schley or Rawley claim. I have known it for a year or so; that is since we have been drilling on the Stockholder's claim adjoining it. I have been in occupancy of the Schley or Rawley since the 5th of October, 1910; that is, on that day I took over a contract and occupied the property within three or four days afterwards, as soon as I could get on it.

The Court: The best testimony is what he has done.

The Witness: I went onto the property; made a location for a well and drove a stake. I took my son-in-law, Mr. Wileman, with me and showed him where I wanted the claim made, and where I wanted the boiler, as nearly as I could. Within a few days after that he went on with the teams and provisions and proceeded to make that grade, and stayed there until it was made.

I paid for the lumber that was on the property and had the rig builder go on and proceed to build a rig, houses;—that is bunk-house and cook-house, and paid for building these structures.

74 I also bought rig irons from the National Supply Company, for a standard drilling outfit, there on the property. All of which was moved onto the property at my expense, and I have had someone on the property at all times since the early part of October, to look after it, and have a man there now, Mr. Dyer, to look after the property. Since I went onto the property in the early part of October, I have spent there more than $2000.

Yes, on October 5th, 1910, I made an agreement with the plaintiff in this case, and under that agreement went onto this property.

The Court (after objection by the defendant): The question is, "By virtue of the agreement you went into possession or went into occupancy." The defendant is entitled to know the terms of the agreement; if it is in writing, that is the best evidence.

The witness here identified the writing and says that it is the original agreement referred to in my testimony, executed between the plaintiff in this action and myself and signed by his and my proper signatures.

This agreement is admitted in evidence, and marked "Plaintiff's Exhibit 4."

I went into occupancy of the property described in the agreement, and have remained in occupancy from that time until this date, by way of carrying out the terms of the agreement and my occupancy has been maintained by virtue of the agreement, and not of any right claimed by me independently of it.

Cross-examination:

I did not have any conversation with the plaintiff in ref-
75 erence to this claim. My first conversation in regard to the matter was with Mr. Brunton, who has testified here. It

took place at Fillmore, Ventura County, probably thirty days before this.

Q. When did you first see Mr. Smith in reference to the matter?

A. I didn't see Mr. Smith.

Q. Didn't see him at the time the agreement was signed?

A. No, I had never met him.

As to my familiarity with this property before I entered into the agreement. Well, I had a map in my office and from time to time we were looking over these things, and I knew its location on the map, and then knew it by its being adjoining our Stockholder's property upon which we were drilling.

Yes, I know the claim as the Rawley claim. It is so marked on that map I have, and is also marked thereon as "claimed by the Union Oil Company."

Within a few days after I entered into this agreement Wileman and I located a rig site. Then within a few days we started to work, getting our provisions out. Yes, there was lumber on the property when I went out. The heavy timbers and some other lumber as well were on the site or near the site where the rig now is. The bunk house, lumber, the inch siding and that lumber were on the other side of the lease, back toward the mountain—Easterly. It was on this claim in question, I should say 200 feet from the line common to it and the Syracuse.

76 Q. I think you stated that you purchased this lumber that was there on the claim?

A. Yes, sir.

Q. From whom did you purchase this lumber, Captain?

A. I paid Mr. Hales.

Q. What inquiry and investigations did you make in reference to this lumber before you purchased it, Captain?

A. Well, I understood that Reynolds and Mann couldn't make good their arrangement, whatever it was, and I could purchase that lumber.

The lumber was taken in there before I had anything to do with this. I do not know of my own knowledge by whom, or at whose instance and request.

Q. You knew at the time or before you purchased the lumber that it was lumber of Reynolds and Mann?

A. Well, I understood it was.

Mr. Cates: I move to strike out the question and answer on the ground that the answer states his understanding and is not responsive.

The Court: Motion granted.

To which ruling and order of the Court the defendant duly excepted, and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 2.)

Witness continues: I paid the money for the lumber to H. E. Hales in Los Angeles. He seems to have a desk in the

77 office of the Brunton Company there. I paid the money to him by checks.

I had not had any conversation in regard to the lumber with Reynolds and Mann—only with Mr. Hales, and Mr. Brunton, here. There were no rig irons on the property when I went up there. I purchased them about the first of November as near as I could tell, and moved them onto the property. I paid the man in Mr. Brunton's office about $700 for the lumber. I made no payment to any other person for the lumber. I paid Mr. Casner for hauling and I think I paid some freight.

Q. Did you make any inquiry, Captain Stowe, before you purchased that, what the right of Mr. Hales was in reference to this lumber?

Mr. Cates: That is objected to as incompetent, irrelevant and immaterial; not proper cross-examination.

The Court: Objection sustained, on the ground that it is not proper cross-examination.

To which ruling and order of the Court the defendant duly excepted, and here assign- the same as error prejudicial to the defendant.

(Defendant's Exception No. 3.)

I think I had more than one conversation with Brunton about this lumber.

Q. Who was the man that you saw in the deal, Captain, that you had your conversations with in reference to making this agreement?

A. No, nothing to do with the agreement. I had no ar-
78 rangement or any talk with Mr. Brunton about the agreement. It was about Reynolds and Mann not having made good and that I could probably get the property.

My office is near the railroad at Fillmore, and I saw Brunton nearly every time he came to town.

Q. With whom did you enter into or agree upon, the terms that is contained in this agreement, Captain?

Mr. Cates: Objected to for the reason that is is incompetent, irrelevant and immaterial. The agreement is the best evidence. It shows for itself.

The Court: Objection sustained.

To which ruling and order of the Court the defendant duly excepted, and here assign- the same as error prejudicial to the defendant.

(Defendant's Exception No. 4.)

After October 5th, 1910, I was on this property once, I think, and once before. While there before October 5th, I saw the lumber. Ed Wileman was with me. I don't remember seeing anyone there at that time, which I think was about two weeks before the 5th of October. I was not out on the property many times last year.

Plaintiff rests.

THOMAS A. SLOCUM, a witness called on behalf of defendant, being first duly sworn, testified as follows:

79 Direct examination:

My name is Thomas A. Slocum; I reside at Tropico, Los Angeles County, California; my age is forty-two years, and I am an oil man. I am familiar with the property in controversy. I have been interested in it. In December or November, 1909, and I think, up to March, in 1910, as a lessee of the Union Oil Company, joint lessee with L. H. Mitchell of Los Angeles. I did at least One Hundred Dollars' worth of work on the claim, making a rig grade, up on the Southwest corner of the claim, and a road leading to it which was necessary as an approach to the grade. This work was done in December, 1909, and I made and filed an affidavit showing the doing of this work on the claim. I disposed of my interest in that lease with Mr. Mitchell about the latter part of March, 1910, I think. By sale outright.

Cross-examination:

Q. How do you know the rig site or grade made by you was on the claim?

A. I was quite familiar with the Stockholder's claim adjoining it and I ran the line from there with a pocket compass, which I had until I was satisfied I was on the Rawley claim. I had a very good map and am quite familiar with that part of the country. I have been on this property, the Rawley, at least three times, and ridden over across that trail a great many times—the trail that leads over the mountain on the Stockholder's place and also the one that leads into Tar Creek. I am speaking of both the road and the trail.

80 The latter is quite a ways from this property. I went with my horse from Los Angeles up there the first part of December; took my compass and established the lines, with it to my satisfaction, starting from the South line of the Stockholder's claim, which was shown to me on one occasion by Charles Miller. I did not find the South-east corner of the Stockholder's property—didn't run across any monument. But there is a very noticeable bend in the road and that was my guiding point, and I ran the line with reference to that bend in the road—not from any known corner.

I got two men out from Fillmore to the claim, and set them to work with picks and shovels. I did not stay with them myself. I did not go there and see what they had done. I took the word of another man. I made the Affidavit of Work on the word of another man, which I supposed was all right.

I stated I took my bearings from the bend in the road, which I don't think lies in the position indicated by counsel but comes from the Southeast and makes the bend. I located the Rawley from this bend in the road and Mr. Miller pointed it out at that time, and my general knowledge of the place. As to the $100 worth of work it was reported to me by my agent and I made the affidavit.

Redirect examination:

I don't recall the exact amount, but it was over One Hundred Dollars.

Recross-examination:

I didn't specify that the work was all on that one claim.
81 I did work on the Baltimore claim, also, and paid out more than $100 for the same.

L. H. MITCHELL, a witness called on behalf — the defendant, testified as follows:—

My name is L. H. Mitchell. I am forty-five years old; Reside in Los Angeles City, and am engaged in the real estate and oil business. I am familiar with the property in controversy and have been on it and adjoining it and around it some five or six times within the last two years. I have been interested in it. Thomas Slocum and myself got a lease of it under the name of the Rawley claim from the Union Oil Company.

The said lease is here shown to the witness and is identified by him and is admitted in evidence, and marked "Defendant's Exhibit A."

The Witness:

We have another original of this lease on record, and Reynolds and Mann have it. We did work under this lease. I had Tom Slocum go up there and hire some men and do some assessment work for the year 1909, and I told him I would pay my proportion of it which I did. The work was done along in December, 1909. I was there the 25th of February, 1910, with H. I. Reynolds, John J. Mann, H. T. McConnely and Hoyt H. Mitchell, my son. Reynolds and Mann are the people that have been referred to here in the testimony. Mr. Reynolds is sitting right there (indicating). My purpose in
82 going there was to show Reynolds and Mann the property. We spent the biggest part of two days there, staying all night at the cabin at Doe Flat and we tried to go to each corner of the claim, and we succeeded in, I think, about three of them. The other corner was down in a canyon, and we couldn't get to it very well, and so we just looked at it. Stood up on the ridge and saw about where it was. This was about February 25th, 1910. It might have been one or two days before or afterwards. I did not see any location notice posted on the claim. There was no person in charge there. There was no tent up on the claim; there was no rig grade made upon the claim; there was a road cut off through the brush going East, clear across the claim or nearly so. I think it was clear across the claim from West to East. The road started down on the main road that runs North or nearly so, on the Stockholder's claim, and this new road was out from that right up along the road going from the Stockholder's up to the Rawley and then clear across the Rawley over to the Syracuse, which joins the Rawley on the East. I did not know at the time that there was any other claim made to the Rawley property other than that of our lessor and ourselves.

I bought from Mr. Slocum his interest in the lease, and paid him

$350 for it in cash; that is, by check. After that I transferred the lease to Reynolds and Mann.

Q. That is to say John J. Mann and H. I. Reynolds of Los Angeles.

83 A. I probably transferred it to the Middle Sespe Oil Company, which they organized, but I made a contract with them that under certain conditions I would transfer the lease to them or any company that they would organize, and they did organize the Middle Sespe Oil Company, and I probably transferred it to that company, which was the company organized by Reynolds and Mann for the purpose of taking over this lease.

They organized a company and sold stock to some twenty or thirty people, and put lumber—sent it out on the ground and started to work. I have not been upon that ground since February 25th, 1910. I am still interested in this lease. I transferred the lease to the Middle Sespe Oil Company, and I was to have $2,500 in money and my son and I were to have 100,000 shares of stock and the stock was placed in escrow in the First National Bank of Los Angeles—as a stockholder and Reynolds and Mann still have the lease, or their company had it, and I am still interested in the property. Since that time I have not done any work upon the property myself.

Q. Why not?

A. When Reynolds went up there to go to work on the property he was driven off.

Mr. Cates: This is objected to as incompetent, irrelevant and immaterial, not responsive to the question, and a conclusion of the witness.

The Court: It will go out.

To which ruling and order of the Court the defendant duly

84 excepted, and here assign the same as error prejudicial to the defendant.

(Defendant's Exception No. 5.)

The Witness: That is the real reason, however, that I am not doing any work. I have had dealings with Reynolds and Mann with reference to going on the lease. With Reynolds and Mann they have my lease.

Cross-examination:

Q. How do you know the corner of that property,—the Rawley?

A. Because Mr. Brunton had been in the office of Reynolds and Mann, and talked to them and told them he had been surveying the land and knew the corners quite well and did show us the corners after I came up.

Mr. Cates: I move to strike out all that answer as not responsive to the question.

The Court: It will go out.

To which ruling and order of the Court the defendant duly excepted and here assign the same as error prejudicial to the defendant.

(Defendant's Exception No. 6.)

A man whose name I do not know showed me the corner. I know that the assessment work was done on the property because I saw it. I know it was on the property because I saw the Southeast and Southwest corners of the Rawley. It was marked with a stake. I don't think there was anything on the stake. It was in the Northeast corner of the Baltimore; it was probably not marked. I absolutely know that it was the corner.

85 I have not been on the property since February 25th, 1910. I saw a road on the property at that time, across the Rawley. I did not build it. I did not know when I was there February 25th, 1910, that anyone else had a claim upon this property. The seeing of the road on the property was no indication to me that anyone else had a claim. I bought Slocum's interest in the lease and the lease is still in existence—has not been cancelled.

Q. I will call your attention—I read from the lease, defendant's Exhibit "A" on page 3, "and the said parties of the second part shall commence the actual operations of drilling for oil, gas or other hydrocarbons upon the hereinbefore described land on or before the first day of February, 1910, and the said operations shall be carried on continuously and in good faith, unavoidable accidents, delays by the elements, Sundays and legal holidays excepted, until one (1) well shall have been drilled to a depth of one thousand five hundred (1500) feet, or until a 'paying well' is completed at a lesser depth, which well shall constitute all the drilling requirements for the year 1910." Did you or your assignees begin the actual operations of drilling for oil on this property before the 1st day of February, 1910?

A. We only built a derrick site.

Q. That is the assessment work that you have referred to?

A. Yes sir.

Q. You didn't begin the actual operations of drilling?

86 A. Unless the building of the derrick site would be considered as actual beginning.

Q. Neither you nor your assignees have ever done any other work upon the property?

A. Yes sir.

Q. Haven't drilled a well during 1910?

A. No sir.

Redirect examination:

I have been in the vicinity of that property five or six times before February 25th, 1910. Every time I had gone in there I had tried to become more familiar with the corners of the various claims on account of my being interested in the Stockholders oil property which joins the property on the west. I was not exactly familiar with the position of the Southeast corner of the Stockholders Oil Company. I knew about where it was, but not exactly. The brush was very thick in there. All that I know about other work that has been done upon the property by my assigns is what I have been told.

Recross-examination:

I do not know exactly where the Southeast corner of the Stock-

holders claim is, but I think it was the same as the corner of the Rawley. I think it is the same stakes. There is a little jog in there a very slight jog, and just at this time I don't remember whether that is the same stake or not, but I believe it is.

H. I. REYNOLDS, being first duly sworn, testified as follows:

87 I reside in Los Angeles, and am in the brokerage business. I have been on the Rawley claim about four times. The first time was about the first of March, maybe the latter part of February, 1910. There were with me on that occasion, Mr. Mitchell, a man by the name of Smith, J. J. Mann and Mr. Mitchell, Jr. We arrived about noon time on that day and stayed until sometime the next day, and were on the claim known as the Rawley. I was there again about the 10th of March, 1910, with Mr. Wilson, for the purpose of locating a place for drilling. I am acquainted with what is known as the Middle Sespe Oil Company. Have been on the property and know such a company as that. It had dealings with Mr. L. H. Mitchell in reference to the Rawley claim. The Middle Sespe Oil Company organized for the purpose of drilling for oil on this Rawley claim, visited by us on the first day of March, 1910. We took an assignment from Mr. Mitchell of the lease to the property after my visit to the property with Mr. Wilson. I was again there on about the 7th of April, 1910, which was my third visit to the property, and was made to select the place to drill.

I have known Mr. Jim Brunton, the gentleman here in Court, now talking to Captain Stowe, for probably a year. I have seen him in our office in Los Angeles, a number of times. In February, 1910, we saw him frequently, and had conversation with him in reference to the Rawley claim. He offered us his assistance in regard to

88 buying lumber and getting it onto the property, and tried to make a proposition to us for the employment of his services.

He assisted us in buying the lumber by giving us a list of just what we wanted, the kind of lumber and size for a complete rig. We used the statement of the lumber needed which he gave us, and purchased the lumber to be taken to that claim. The amount of the lumber was $1600 worth, besides hauling it.

We purchased it in, and shipped it from Los Angeles to Fillmore in Ventura County. When Brunton was in our office during February and desired to assist us in getting the lumber and tendered his services he was not acting for the plaintiff or Mr. Cates, the attorney here, or anyone at that time.

Q. Did he know that you had taken over the property or intended to take it over?

A. I think he did, yes sir.

Mr. Cates: I move to strike that out as a conclusion of the witness.

The Court: It will go out.

To which ruling and order of the Court the defendant duly excepted and here assign the same as error prejudicial to the defendant. (Defendant's Exception No. 7.)

I had conversation with Mr. Brunton at Los Angeles with reference

to the property and our relation to it, and what we intended to do. He did not disclose to us that anybody else claimed the property. We had purchased the lumber prior to March 10th, when I first visited the property, the second time, and it had already been shipped.
89 I saw it—part of it was at Fillmore, and part of it was at the foot of the hill in the Little Sespe.

When I went out to the property on the 10th of March, with Wilson, we met Brunton at Doe Flat which adjoins the Rawley claim. When we went there we expected to get Mr. Brunton's assistance in finding the corners but he informed us that he was there to protect the property; that some other people had taken it over, Mr. Smith and Mr. Cates, he said. We returned to Los Angeles. He gave us to understand that he was there to prevent anyone from going on the property, and of course we didn't make any attempt to go on.

By the Court:

Q. You began to realize that you were getting into the oil business?

A. Yes sir.

We moved this lumber onto the Rawley claim. I couldn't just state what time, but it was quite a little while getting there. I visited the property again after March 10th. Sometime in the first of April with Mr. Wilson to locate a place for a well and to drill. We located the place to drill. Mr. Wilson was interested in the claim,—in the corporation; as an oil man, and is a man that knows something about the oil business, and knew the territory so as to assist me in locating the well, which we did locate at that time. I am not positive whether any of our lumber was on the ground at this time. But I think there was just a few loads.

Jim Brunton was there on the occasion of this third visit. We had conversation with him there on the Rawley claim but I couldn't recall now whether he made any statement to us at that time
90 in reference to his business on the claim. We stayed there all night. Someone had some tents on the Rawley property at that time, and we stayed all night?

Q. With Mr. Brunton?

A. Mr. Brunton wasn't there in the evening, but he came the next morning before we got away. He was there at the time we selected the place for the well. We selected the place close to someone's camp. Brunton assisted us by pointing out the corners on the property and said the place that we had selected would be the place to drill. He made no objections at that time to our coming on the property. Nor did he say whom he was working for. When I was on the Rawley claim the first time about the first of March, 1910, there had been work done upon the Rawley claim. There was a road built at the South end of the claim or at least it was claimed to be on the Rawley property. Of course, I didn't know at that time just what was the Rawley property. It was pointed out as being assessment work. I didn't own any lumber on that claim at this time. I didn't notify the defendant Union Oil Company at that

time or at any time thereafter that I had sold it, or that I did not intend to develop the property.

Cross-examination:

I couldn't state the date in February, 1910, that J. P. Brunton was in our office. He didn't state to me that he was acting for anyone other than himself. He so stated at the property when I was there the second time in March.

91 Brunton didn't state that he was representing anybody, except himself when he had conversation with me immediately after we had taken over the property. He came to our office. He knew that we had taken it over. We had been up to the property and I came back and decided to take over the property and Mr. Brunton came into our office and offered to give us assistance at that time. I didn't specify the date in April that I was there. I think it was the early part of April. He did not at that time state to me that he represented the plaintiff Smith in this action. I am an officer of the Middle Sespe Oil Company; and director and Treasurer of the company. I do not know whether the company paid its corporate license tax for the year 1910-11. I handle the money for the company. We have not drilled any wells on the property nor erected any structures. Previous to putting the lumber on the property in April, we had an agreement with the plaintiff in this action allowing us to put it on. We had promised to put the lumber on the property. We did not move off the property. The Middle Sespe Oil Company did not give up occupancy of it. It never did. It disposed of the lumber on the property, but as I understand never surrendered the property.

Q. How long has it been since you attempted to do it?

A. Well, we had not done any work until this trouble came about that we thought would probably interfere with our going ahead there.

92 Q. You don't know how long since you have done any work?

A. We haven't done any work except hauling lumber there which took quite a few weeks to do, and about the time we got the lumber in there, then we—under the conditions we thought we had better not do any work.

Q. What conditions do you refer to?

A. We didn't know the title to the property—what would be the outcome of this trouble, and we didn't care to spend any more money.

By the Court:

Q. What trouble,—the trouble between Smith——

A. The fact that we had been notified that there was some trouble about the—well, I think it was—came from Mr. Cates as I recall, likely, or from Mr. Mitchell.

I don't remember just what the words of notification were. There was sufficient stated to make us feel that it was risky business to spend any more money there.

No, I do not believe that the Middle Sespe Oil Company complied

with its agreement with Mitchell. I do not know about this, because I don't know just what the agreement was.

By the Court: Prior to going upon the ground and meeting Brunton, you had had some arrangement with Smith had you, or somebody representing Smith, some negotiations or compromise?

No, sir. Not the Middle Sespe Oil Company. The negotiations were between Mitchell and Smith. After the thing was adjusted of course we went ahead and then hauled the lumber on the
93 property. I don't remember just what notification we received after that. It was sufficient to make the Middle Sespe Oil Company feel that it wouldn't spend any more money there until we knew the thing was right.

By the Court:

Q. Whom did you sell the lumber to,—Stowe?

A. No, sir, we sold it to a man named Peck, as I remember his name was George Peck,—was the man who paid us for the lumber. I think it was some time in September.

Redirect examination:

Neither I nor the Middle Sespe Oil Company had any compromise or any agreement with the plaintiff in this action prior to the time that we went to the property in April. I never met Mr. Smith. After the middle of last summer Mr. Brunton would be at our office sometimes as much as three times a week, four times. Maybe we would not see him for a couple of weeks again. That has been going on off and on ever since we have taken over that property, probably about a year. "Did I have any interview with Brunton in reference to this Rawley claim during that time"? No, I believe I said the second time that we went to the property, I think it was some time in March when we went up there to locate the well, and we met Mr. Brunton and he stated at that time that he was there to protect the property, and he mentioned the name of Mr. Smith and Mr. Cates. He told me at that time that I could talk with them people and find out what they had to say about it.

94 The Court: The evidence of this witness tending to show admissions made by Mr. Brunton would have to be while he was representing himself to act for other parties, any admissions that he might have made for him at any time during the year or in any of these interviews. With that qualification to it, the testimony would be admissable.

To which ruling and order of the Court the defendant here duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 8.)

The Witness: Yes, sir, as I stated at the time that we were at the property in March, 1910, Mr. Brunton made statements in reference to this claim, holding himself out to be the agent of and connected with Mr. Smith, the plaintiff. I do not remember that

he did so on the occasions when he came to our office after midsummer.

Q. Did Mr. Brunton at any of these times ever talk to you about your lumber on the Rawley claim?

A. Well, I don't know.

Mr. Cates: This is objected to as incompetent, irrelevant and immaterial.

The Court: The objection will be sustained. I do not think the testimony of the witness can give any interviews or statements or admissions made by Mr. Brunton except when Brunton was holding himself out to represent the plaintiff in this case.

To which ruling and order of the court the defendant
95 here duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 9.)

(By Mr. Bowker):

Q. Did Mr. Brunton at any of the times when he called there at your office after along about the tenth day of April last year have any conversation with you in reference to the Rawley claim or about your lumber that was placed thereon?

Mr. Cates: I object to this question as incompetent, irrelevant and immaterial.

Mr. Toland: Mr. Brunton himself has testified to his agency and Mr. Smith has admitted it on the witness stand here and Mr. Brunton is shown to have been on the property down to the beginning of this injunction proceeding still in connection with the property and with the plaintiff. His agency is shown by all of the testimony in the case.

The Court: The objection will be sustained.

To which ruling and order of the Court the defendant here duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 10.)

The Witness: I don't know where Mr. Peck resides, nor do I know whom he represents.

J. P. BRUNTON, recalled on behalf of the defendant, testified as follows:

96 Direct examination:

I believe I did have some interviews with Mr. Reynolds, who has just testified, between the 15th of August and the first of November, 1910. I used to call at his office once in a while on various propositions. He was handling stocks—excuse me if you want to know my purpose—not particularly for any one company but on different occasions and different stocks. I do not remember of ever having any interview with him in regard to the Rawley claim, with

the exception of the time which he speaks of along some time in May, I don't remember. April I believe it was.

I don't know George E. Peck.

I believe a portion of the lumber that Reynolds and Mann hauled out and put on this claim had been transferred so that it came into the hands of Captain Stowe and is now being used on the claim. That is something that I don't keep track of, the lumber.

Q. You knew that Reynolds and Mann shipped a carload of timbers up there, didn't you?

A. I knew that they had some rig material in that district. They represented that they had.

Q. You knew that it was hauled by them to the foot of the hill?

A. Well it was so stated by teamsters or something.

Q. You knew that it was hauled from the foot of the hill onto the Rawley claim?

A. I have heard statements to that effect.

Q. Weren't you there?

A. I don't know that I was there.

97 Q. Weren't you on the Rawley claim while that lumber was being hauled on there?

A. My recollection of that is not clear. I don't remember. I have seen lumber on the ground that was supposed to have been Reynolds' and Mann's and I may have been there at the time, but my recollection is not clear.

Q. Your memory is not clear as to whether you were there when any of that lumber was being hauled on or not?

A. It seems to me that there was a load of lumber when Mr. Reynolds was up. It is not clear as to whether it was or not. I have been there various times.

Q. You took note of this lumber that was taken up there by Reynolds and Mann while this controversy was going on when you were representing one side of it on the ground?

A. There never was any lumber placed on the ground to my recollection until after the proposed settlement had been made by Reynolds and Mann.

Q. But the lumber was placed on the ground, and it was placed there by Reynolds and Mann, was it not?

A. My recollection of it is the only man that ever brought any lumber on there for Reynolds and Mann, Mr. Swanson, sitting back there and I believe I have seen him hauling lumber on the claim, but I could not say as to whether I have or not. My recollection of that is not clear.

Q. Your recollection then is not good?

98 A. That they put the lumber on? It was so stated that they done it or caused it to be put on.

I am not working on that claim now. There is no work on there I believe. I have been there off and on ever since the claim was located and was there at the time this action was begun. I cannot say that I was superintendent or in charge of the work. I was doing work on the claim. I could not say as to what my position—as to whether I was authorized to have charge of the work.

Q. For whom were you working? Did you represent Mr. Smith?

A. His interests, I believe. I cannot recall the dates when I went there representing his interests. I could not state when I went out there in that work prior to the commencement of this action. It was a short time before but I could not give you the dates now. I was there at the time Captain Stowe first came out there, but I do not remember whether it was the fifth of October or not. I was merely showing Captain Stowe over the ground. He wanted me to go up. He said I was familiar with the lines and all that sort of thing. He wanted me to assist him to show him where the lines were. There was some lumber on the ground at that time. I could not state as to whether it was the Reynolds and Mann lumber which had already been hauled onto the ground or not.

Q. Don't you know as a matter of fact, or do you know, that they hauled on there all the lumber necessary for a standard rig?

99 A. I think that I know that they did not.

Q. You made out a bill to them for all of the lumber for a standard rig?

A. No, I didn't make out one for all of the standard rig. I believe Reynolds and Mann never had a rig, because it has been said by others and I never checked the lumber.

Q. You state that a part of that you believe on hearsay?

A. That is the only reason I had to believe it.

Q. You gave them a bill for a complete rig?

A. I am not positive of that. I gave them a bill for some lumber, but whether it was for a complete rig or not I don't remember as to what I stated. I am interested in so many rigs that that one particular—I do not deny that I did give them a bill for a complete rig. I do not remember whether I saw that lumber at the foot of the hill in my comings and goings there or not. I don't say that I didn't see it.

Q. You saw it on the ground after it got there, all of it, did you not.

A. I saw some lumber on the ground.

Q. I am asking you whether you saw it all, the timber for a complete rig, on the ground?

A. I could not make a statement to that effect for I am not positive. At that time I don't think that there ever was a complete rig on the ground, unless it has been since Captain Stowe has placed it there, I never checked it up previous to that time, so I would have no way of knowing.

100 The lumber was hauled up there to my knowledge after this agreement had been reached which is on record. I cannot remember the date. It was after April seventh, I believe, or something of that sort. I could not make a statement to the effect that it was between this and the 15th of August somewhere. I could not say as to when Reynolds and Mann ceased hauling. I do not remember as to whether it would be before or after the first of July or at any other time. Yes, I have asked Reynolds, I believe,

to negotiate with me to buy that lumber. I don't remember that it was after the first of July—what time it was. I am unable to state how long it was before Captain Stowe went up there that I asked him to say whether he would sell the lumber or not; or as to when it was. I cannot say whether it was one week or two weeks before. I don't remember anything about the time.

Q. Did you try to negotiate with Reynolds for the lumber?

A. I asked him what—probably what he would take for it. I can't remember. At various times I talked to Mr. Reynolds about the Middle Sespe Oil Company and his stocks and various other stocks.

Q. And selling it? Talked to him about selling it?

A. Probably I have. I could not swear that I did or didn't.

Q. And you do not swear that you did not?

A. No, if I did talk to him I would not be talking for Smith I would be talking personally for myself.

101 Q. Did you not indulge in negotiations, participate in negotiations by which your matter was taken over by Stowe?

A. That is pretty broad. I have dealt in those stocks and interests most every way and sold a great many stocks and I could not state.

Yes, I know Mr. Hales. He is in the Brunton office. I am unable to state his position there. He is a broker. I have no interest whatever in the Brunton Company's office, but I know him. I knew about the time that he sold Captain Stowe this lumber. I cannot say that I knew that he was going to sell it to him. I knew that there were negotiations between them.

Q. And you had participated in the negotiations directly or indirectly?

A. I had talked to Captain Stowe in regard to taking over the claim.

Q. On getting that lumber?

A. And purchasing any lumber that could be——

Q. Getting that lumber?

A. I cannot say that I did, that particular lumber.

Q. You did talk to him about getting that lumber of Reynolds and Mann, didn't you?

A. I don't remember just the conversation as to what was passed between us. Either Reynolds and Mann or I went up and spoke to him.

Q. Or Captain Stowe?

A. I say I don't remember as to what was talked over in regard to that.

102 Q. Didn't you talk to him about getting the lumber of Reynolds and Mann so that the lessees (of the Union Oil Company) in charge of that property would be without material, putting it up that way to him?

A. I don't remember.

Q. You don't deny that you did?

A. No sir, either one or the other. I don't remember.

Q. Now Mr. Brunton, aren't you interested in the contract that is said to exist between Mr. Smith as a party and Captain Stowe?

A. Not that I am aware.

Q. Aren't you to have some of the stock that it provides shall go from Captain Stowe to Smith? Isn't there an arrangement to that effect between you and Smith?

Mr. Cates: It is admitted that there is.

Mr. Bowker: But I think that the witness can probably state without the statement of counsel.

The Court: If there is an admission by counsel it ought to be just as satisfactory as the witness's testimony.

A. What I was going to say, I don't remember as to the agreement, what interest I might have. I expected to have an interest some time probably. That was *what* I was negotiating their deals when I was out superintending the proposition. I thought I had a right in the open field to trade some stocks as well as superintend.

Q. You had that from the beginning?

A. Not by Mr. Smith or any of them giving consent. I took that privilege upon myself.

Q. From the very beginning you were interested in the proposition?

A. We never had a settlement, Mr. Smith and I, never had
103 a settlement in regard to that. Mr. Smith said if I got him something and it was of some value he would take care of it some time, probably give me an interest. Not to say that I was interested in that, but everything was left to Mr. Smith.

Q. You abided by his judgment and direction? That was all there was to that wasn't it?

A. I could not say that I was interested in the property.

Q. You could not say that you were not?

A. As I told you, until it was turned over, I could not say. I would be at some time, but at that particular time I could say yes, that I was not.

Q. You made the location of the property for all of these people, notified them of it, went and got their consent, and didn't have any interest in it?

A. Well if I got them, as I said before, some valuable property, I was some time to be remembered. In what way we could not decide. It did not get down to the point.

Q. It finally got narrowed down to three people, didn't it, as those that were interested?

A. I don't remember that there was three people interested.

Q. Do you know that there were not?

Mr. Cates: I object to the question as incompetent, irrelevant and immaterial.

The Court: Yes, I think so.

To which ruling and order of the Court the defendant here
104 duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 11.)

I am acquainted with Mr. Grinnell, superintendent of the defendant, in that field. I don't think that I spoke to him on any occasion to the effect that I had that property and had the plaintiff and Mr. Cates interested with me. I saw Grinnell and told him that I was representing the plaintiff. I don't think I ever mentioned Mr. Cates' name at that time. I don't remember of any conversations wherein I said that I had that property and they were interested with me or anything to that effect.

Yes I was to have some stock in the little Sespe Company, which was the owner of the Syracuse claim. My interest in that began after a sale had been made of the property, I believe. I don't remember whether that was before the location of the so-called Schley claim.

Q. You were interested in that in 1909, weren't you?

A. I have no recollection of those dates.

Q. You were interested in that before the road was built across Rawley or Schley?

Mr. Cates: I object to this question as irrelevant, immaterial and incompetent.

The Court: Objection sustained.

To which ruling and order of the Court the defendant here duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 12.)

Q. Do you know George S. Peck?

165 A. No sir.

Q. Do you know any man by the name of Peck?

A. Yes, sir.

Q. What are his initials?

A. I know a number of Pecks.

Q. Do you know anyone who had anything to do with the purchase of this lumber by the name of Peck?

A. Yes, sir.

Q. Who was he?

A. He was Zue G. Peck. He lives in West Los Angeles. He used to be an attorney up there.

Q. You knew that he was going to buy that Reynolds and Mann lumber?

A. I knew that he had talked of lumber, yes. He is a broker as well as a promoter. He is not interested in this proposition that I know of.

Q. Now do you know who furnished the money to Mr. Peck to buy that lumber?

Mr. Cates: If your Honor please, I object to that as immaterial, irrelevant and incompetent.

No ruling upon the objection.

(Defendant's Exception No. 13.)

Mr. Cates: I am perfectly willing to admit—I can not admit that Reynolds and Mann put on so many linear feet of lumber, but I am perfectly willing to admit that they hauled lumber on the ground,

and that whatever they hauled on the ground finally came by purchase into the hands of Captain Stowe.

Mr. Toland: Do you admit that Mr. Brunton furnished Mr. Reynolds a full and complete bill for a standard rig, and that Mr.
106 Reynolds ordered it and had it shipped there and hauled upon the ground?

Mr. Cates: I don't know that I am willing to admit that. I don't know whether it was a complete bill. But I am willing to admit that the bill that he furnished was put on the ground and afterwards came into the possession of Captain Stowe by purchase.

Cross-examination of J. P. Brunton:

I never had anything to do with negotiations about the purchase of that Reynolds and Mann lumber as the agent of Mr. Smith.

L. H. MITCHELL, recalled on behalf of the defendant, testified as follows:

I desire to correct my testimony on one point. I stated that when I went over the Rawley I did not see any derrick site there. I should have said, except the one that was put on there by Slocum and myself in doing assessment work in the south-west corner of the Rawley claim.

Cross-examination:

I testified in my direct examination that an arrangement was made with Reynolds and Mann and the Middle Sespe Oil Company, or with the Middle Sespe Oil Company, in regard to going upon this property.

(By Mr. Cates:)

Q. What arrangement was that and when was it made?

107 Mr. Toland: Objected to as incompetent and immaterial from the standpoint of the Union Oil Company, the defendant.

The Court: Objection overruled.

To which ruling and order of the court the defendant here duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 14.)

A. My proposition was made to Reynolds and Mann, in writing, on the 21st of February, 1910, after Reynolds and Mann or the Middle Sespe Oil Company were refused admission upon the property. As Reynolds testified I telephoned them or saw them and told them that I had seen the plaintiff and for them to go right ahead and go to work; that there would be no further trouble.

Q. What was that arrangement with Mr. Smith permitting you to so notify Reynolds and Mann?

Mr. Toland: I object to this question as incompetent and immaterial.

The Court: Objection overruled.

To which ruling and order of the Court the defendant here duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 15.)

A. Why Mr. Smith was to have 75000 shares of stock in the Middle Sespe Oil Company for a quit-claim deed of himself and associates to the Union Oil Company. This deed with the communication accompanying it was delivered to me by Mr. Cates. I
108 have the communication. The first two sheets that I hand you are the communication. The third sheet is an unsigned copy of the receipts that I gave you for the deed at the time. I afterwards returned the deed to you. I do not remember just the time, but I have the letter here from you that will give you the time.

Mr. Cates: I offer this letter in evidence and desire to read from it.

Mr. Toland: I object to it as incompetent and immaterial.

The Court: Objection overruled.

To which ruling and order of the court the defendant here duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 13.)

Paper read and introduced in evidence as plaintiff's exhibit number 5.

A. I have a letter from you, Mr. Cates, which shows the time that I surrendered the deeds—returned them to you.

Mr. Cates: I offer this letter in evidence.

Mr. Toland: I object to it as incompetent and immaterial.

The Court: The objection is overruled.

To which ruling and order of the court the defendant here duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 17.)

This letter dated August 15, 1910, is admitted in evidence and marked "Plaintiff's Exhibit Number 6."

109 H. I. REYNOLDS, recalled on behalf of the defendant, testified as follows:

Reynolds and Mann spent about $2,375—about—in preparing to develop the Rawley claim. We got $1600 for the lumber. It was paid to us by Mr. Peck. Not all at one time; he paid it at different times. Part of it was paid in cash and part in checks, but I don't remember whose checks they were. I believe some of them were his checks. I don't know the names of the people whose checks appeared in the transaction. There might have been a man named Ricketts or Riggs or some such name, but I don't remember now. I could not say with any certainty. There were checks besides Mr. Peck's handed to us, but I don't know whose names they were. I don't know indeed, whether one of them was the check of the man named Scribler or not.

Cross-examination by Mr. Cates:

Yes, sir, I said that the Middle Sespe Oil Company spent $2375 and got back $1600, making a net expenditure of $775.

A. A. WARD, a witness called on behalf of the defendant, being first duly sworn, testifies as follows:

My name is A. A. Ward. I reside at Fillmore, in Ventura County; am fifty-eight years old, and am an oil man and do oil well work. I have been in that business in this county about eighteen years—up in the Sespe and Tar Creek region a good deal of the
110 time. I know where the Rawley oil claim is. I am familiar with the claim adjacent to it on the west and opposite the south end of it, and the Stockholders Oil Company is operating the last named claim at the present time.

Q. How long have they been operating it?

Mr. Cates: I object to the introduction of this testimony on the ground that it is immaterial, irrelevant and incompetent.

The Court: I presume this testimony is offered as tending to show that the defendant has complied with the provisions of the Federal statute. Let the testimony go in under the objection, subject to a motion to strike it out. The plaintiff will be deemed to have this same objection to this line of testimony.

The Witness: It has been about three years since the Stockholders Oil Company took the lease on the claim mentioned as being adjacent to the south half of the west side of the Rawley, at the south end thereof. This claim, which is being operated by the Stockholders Oil Company is known as the Sampson claim. It is a square quarter-section of one hundred sixty acres and adjoins the Rawley on the west,—that is, the Rawley is on the east side of it. The Stockholders Oil Company began actually drilling on the Sampson claim in May, 1909. The south-east corner of the Sampson coincides with the south-west corner of the Rawley, and the east line of the Sampson coincides with the south half of the west line of the Rawley.

I have not myself worked upon the Sampson claim. Nor
111 have I been in charge of it to any great extent. The Stockholders Oil Company put a drilling outfit on it, in May, 1909, and they have been working a great part of the time since with it, I don't know how deep they are. I haven't been over there for a good while. I have seen the drilling outfit there, but have never seen it in operation. I was there in May, 1910, after a hole had been made, and the hole was about one hundred fifty feet deep the last time I was there. I was there not as a spectator but as a stockholder in the company looking it over. I took the men over there and started them in working and started them up at that time. I haven't been there since. My son is operating there. He is at home now. His wife is dangerously sick. She got badly burned about a week ago and he could not get away. I was at his house myself the day before this case commenced and saw her and know that her condition is very bad and that he could not get away without great risk.

Mr. Cates: I move to strike out all of the testimony of this witness relative to any work done upon any other property than the property in controversy, for the reason that it is incompetent, irrelevant and immaterial.

The Court: The ruling will be reserved.

It is stipulated that the testimony of the witness E. L. Ward (absent because of the illness of his wife) given on the hearing on application for injunction herein may be considered as evidence in this case, subject, however, to the plaintiff's objection to it as incompetent and immaterial, and to his motion to strike it out on that ground.

It is here stipulated that John A. Casner and N. H. Swan-
112 son called to be sworn as witnesses on behalf of the defendant, hauled from Fillmore station to the foot of the hill and from the foot of the hill onto the Rawley claim all of the lumber that was shipped from Los Angeles by the Middle Sespe Oil Company—Reynolds and Mann, as and at the times indicated by the testimony of the other witnesses.

G. F. Riley, called as a witness on behalf of the defendant, first being duly sworn, testified as follows:

I reside at Four Forks, Sespe District, Ventura County. I am foreman of the Union Oil Company under Mr. Grinnell and have been acting in that capacity since November 7, 1910. I know where the Rawley claim is. I have been employed upon it. About the 25th of November, 1910, I was building a rig grade there. The building of it was begun, I think, about November 20, 1910. I was there at the time. I went upon the Rawley claim for the purpose of assisting in constructing that grade at that time. There was not any opposition to our working there. I was in the employ of the Union Oil Company. There were others there besides myself. I am not positive whether we were there more than one day or not, but I am positive that we were there one full day. The first day there were some fifteen or sixteen men there besides myself building a rig grade. We were working with pick and shovel, and also with some powder, on the southwestern corner of the Rawley claim.
113 There had been work on that portion of the Rawley claim prior to that.

Cross-examination of C. F. Riley:

There were no threats of violence used against me personally. I would not swear to the time that I was on there myself. It was about the 20th of November, but I am not positive. I think it was between the 15th and 30th, although I am not positive in regard to that. It was in November, the latter part, I think, about the 20th.

Walter Barry, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

I reside in the town of San Buena Ventura; am 26 years old and am a surveyor in the employ of the Union Oil Company, the defendant. I am familiar with part of the location of the Rawley oil

claim, that part at the south-west corner of the claim. In the latter part of 1910 there was a grade or dug space there on that claim.

Cross-examination of Walter Barry:

I made a partial survey of that claim. I located its south-west corner and its south-east corner. To locate them I ran from the north-west corner of the Baltimore claim, where there is a monument established by Treadwell.

Yes, I saw that there had been work done on the Rawley
114 claim. I should judge about forty feet, in linear feet. The soil there is a hard shale rock. Some of it could be picked with a pick and some of it would have to be shot. I did not examine the grade closely where it had been dug before, but I examined it closely where we later dug. I had had some experience in making grades and roads in that district and in other mountain districts. I have not examined the original grade since I testified here at the injunction hearing. I do not exactly know the cost of building roads and grades in that character of district. You cannot judge. There is no way. There is no basis to work on there. Some parts are harder than other parts. Judging from the formation that is immediately above that we last worked on, in my opinion the cost of making that forty linear feet of grade fifteen feet wide was about $100. I estimated the original grade as being fifteen feet wide. I place the estimate of the cost at $100, just simply judging from the formation up above and the work done up above ten or twenty feet above that.

The Court: Was there quite an excavation made? Was it dug down or just along the top surface of the ground, brush just cleared off along the surface of the ground?

A. The grade was there. I don't know whether there was any brush or not. It is on a 38 grade pitch.

Q. Digging right straight in?

A. Level.

Q. There is a high bank on one side. The other slopes down into the canyon. No. 15 x 40 feet is not a very large area.
115 The fact that it takes a hundred dollars' worth of work under the law to hold a claim has nothing to do with my estimate.

JOHN IRWIN, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

My name is John Irwin. I reside at Santa Paula, Ventura County.

Mr. Cates: Mr. Irwin's qualifications as an expert and his familiarity with that territory are admitted.

I am familiar with the Rawley claim and the Sampson or Silver also. The Sampson is west of the Rawley,—that is the Rawley joins the Sampson on the east side of the latter. I am familiar with what is known as the Arizona claim.

Mr. Cates: I object to this testimony, the whole line of testimony relative to property other than that in controversy, on the ground that it is immaterial, irrelevant and incompetent.

The Court: It will be so understood.

The Arizona claim joins the Sampson claim on the south. I am somewhat familiar with the oil formations there, the geological formations.

Q. What is the character of that land as to being mineral or not?

A. It has showings of that character.

The mineral is petroleum oil. I was on those claims about the first of November, 1910. It must have been ten years or
116 more that I was there before that time. When I was there in November, 1910, there was development in progress on the Sampson. A well had been drilled. Though there wasn't anybody drilling at it when I was there. I just passed through there just a part of a day, and just at that time they were not drilling. I did not go out to examine the depth of the well. I was requested to go out to see some of the claims in that country that I had used to—that was owned by the Union Oil Company at one time.

Q. You were showing the corners, monuments and the positions of claims?

A. In the Rawley the corners—showed where the corners were. I rode over that trail and just simply showed them where the corners were at a distance and where the claims lie, the different claims, as I went over them. They seemed to be strangers that was with me so I went out for that purpose to show them. The persons with me were Mr. Grinnell and Mr. Rose. I believe Mr. Rose was there. He was the Union's pipe man. I noticed the positions of this well on the Sampson or Silver claim. It was somewhat in a northern direction, rather west or north, I would judge from the oil well that was drilled on the Arizona. The last named well was on the northwest corner of the Arizona. This well that is being sunk on the Stockholders lease—it would be pretty well to the west—west and south, just over the ridge from Silver canyon, over the ridge in the Little canyon.

There is a draw that runs down into the main canyon. I un-
117 derstood that the well, before I went out, was in Doe Flat, but it was this side of Doe Flat,—that is, south of Doe Flat, considerably south and west. They did not have a camp on Doe Flat. It was near the well. At the time I was there in November, 1910, the improvements that I observed consisted of the drilling rig and camp house which I judge was sufficient for carrying on a camp for drilling for a rig like that.

The general direction or dip of the rock in that claim, the Sampson, is rather north-west.

Q. By the rock do you mean the formation?

A. I understood you to ask what the dip was.

Q. Yes, sir, the dip of the rock in that locality.

A. To give you an idea. There is an anticline at Tar creek, where the old wells, numbers 1 and 2, running west, east and west towards Silver Top, or south of it, and going south of that range dips to the south-east and from that point it dips to the north-east. That is the general dip. The general dip is to the east of the country, you might say, but this is the shape of the formation. It is over Tar Creek and is near the center, and it runs down the Little Sespe (creek) at the

foot of the hill, and from there it dips the other way, and that is the shallowest part of the country, you may say, is at Tar Creek. The formation is just like a horse shoe, the toe of the shoe is away in Tar Creek, is away into the canyon, geologically, and the other is out. Kentuck is at the toe of the south side and away out here before you get to the red formation you are on the other toe on the other side.

118 We have drilled a line of wells, you might say, from the foot of the hill out to Silver Mountain and all wells that was drilled a certain distance away to the west was very heavy and when we got in a certain line it was lighter to the east and my way of always doing was to start on the seepage or near it, and work back. Whenever we got to a strata that produced the most oil then follow it up with the wells. We often went deeper and got heavy oil. Giving you an idea at Tar Creek old number 2 was 220 feet deep and produced 200 barrels a day. Number 1 was 196 feet and produced 100 barrels, and just between them two wells I dug 2,300 feet. We struck that same rock at about 800 feet, or a little less than 800, and went on to 1600. At 1600 it was heavy oil. We got a good showing of it, but it was too heavy for our people. In those days. We had no use for it.

Coming back to the well which I saw in progress on the Sampson: I think the sinking of a well in that place will tend to develop and to determine the oil bearing character of the Rawley claim in a measure, if the well is not too far west.

Q. I refer now to this well and ask whether that well sunk in that place on the Sampson will tend and does tend to the development or to prove the oil bearing character, to determine the oil bearing character, of the Rawley.

A. Yes. If I got oil there I would certainly think that it was further east. The territory on the Sampson would be shallower—shallower than the Rawley. The Rawley would be deeper. I always went on the shallower territory and worked back. The well

119 which I have said was sunk on the Arizona was 695 feet deep. The oil was got in it at 320 feet. I could not tell now how much oil was obtained at that depth, but I should think that two or three maybe four or five barrels. Yes, it was a substantial showing of oil. It was a small showing of oil. I located the well. I was superintendent for the Union Oil Company at the time. No, I was not either. That was put in under the Sespe Company. Sespe Oil Company, which was afterwards merged into the Union and the Union is its successor. The old Hardison and Stewart Oil Company owned a controlling interest in the Sespe Oil Company and it was the Sespe Oil Company which as I say put the well down on the Arizona.

Cross-examination of John Irwin:

I think it was along about the first of November, 1910, that I went out into the territory where are the Rawley and other claims with Mr. Grinnell and Mr. Rose and some other gentlemen. Mr. Grinnell is now the superintendent of the Union Oil Company in Ventura County. He asked me to go out with him to show where the claims, certain claims, north of Tar Creek, were and asked me if I knew them, and I went over there.

That well was drilled on the Arizona claim in 1889. At that time I was superintendent of the Sespe Oil Company. The well was never operated nothing more than just to drill it and so far as I know has never been operated.

I was superintendent of the Union Oil Company, the de-
120 fendant, for seventeen years. It was organized in 1890, and I left them in 1900. I was with the interests which were merged into the Union Oil Company from the early part of 1883. I do not remember how long ago it is since the cabin was built out there on the Sampson where the Stockholders well is. I do not know as I could tell you just what the dip is of the formation which, as I have testified, goes under the Sampson and under the Rawley claims. I have not paid any attention to that dip for a long time.

Q. Now in answer to counsel's question as to whether or not a well drilled on the Sampson would tend to prove the oil bearing character of the Rawley, you stated, I believe, that it would if they got oil on the Sampson.

A. Yes, sir.

Q. You do not know whether or not they have gotten oil there, do you?

A. No.

Q. Also in reply to counsel's question you stated that in order to develop that property you would not have put the well where it is.

A. No.

Q. Why, Mr. Irwin, wouldn't you have put the well there?

A. With my knowledge of the country is why. Mr. Ward came to me and asked me about it before locating it. He told me that they had a lease of the Sampson or Silver and I asked him where he was going and he said he wanted to locate in Doe Flat. I said "If
121 you go to Doe Flat you go just as far east as you can on Doe Flat," I told him, "that the chances is—" I asked him if he knew where the corners was. He said he didn't know. I told him that he would find a bunch of sycamore trees; near those sycamore trees, east of them, was the corner and the northeast corner of the Silver (Sampson), and I told him that it was but a short distance away right in this place he could be on the three claims; that hollow place was the center of the Rawley. I told him that if I had the lease on the Rawley I would be in favor of going—I told him he wanted to get as far east as he could, and I told him I didn't think he would have to go very deep, and when I went out there in November I was surprised to find where he was.

Q. Then in your opinion, as an expert, you do not consider that the well—a well drilled in the present location—you don't consider the present location the best one to determine the oil bearing character of the Silver or the Rawley or both?

A. No.

Yes, I stated in my testimony in regard to the geological formation that well number 1 in Tar Creek was 196 feet deep and well number two 220 feet deep; also that well number 1 started off with 100 barrels of oil per day, and well number 2 with over 200 barrels per day.

By saying that I went back after drilling wells numbers 1 and 2, I meant that I went further east, toward the mountain three or four hundred feet from number 2.

Mr. Toland: I desire to interpose an objection to this testimony in regard to said wells numbers 1 and 2, on the ground that it is
122 immaterial, it being known that Tar Creek, where they are, is two miles away, at least, from the Rawley claim.

The Court: I think it is permissible. It possibly may tend to show the oil bearing character of the lands here, the whole territory.

The Witness: That point where this well was drilled on the Sampson claim is a pretty hard limestone formation which you have to bore through. The limestone formation is right on the surface and is a large formation. As you go into it, that is, until you will get so far that you are getting into the quartz, into the old formation, and the chance is that as you go further north and in that line you will be into a formation that has undergone a heat so that there would not be any light oil. It would be too heavy. The formation has undergone a heat. In other words, there has been a good deal of sulphur in it and the sulphur has burned out and burned the formation.

Yes, I stated that in Tar Creek, after going back 300 feet east of well number 2, we had to go 800 feet before we got oil; also that we sank the same well deeper to 1600 feet and got another one, but the oil was heavy at that depth and I said that it had been a producing well from the 1600 foot depth; that our people did not want that kind of oil, and we filled up to 800 feet and pumped from that point. I was just giving you those facts to prove that it might do the same there, (meaning on the Sampson and the Rawley).

Q. That is just what I was trying to get to; that the mere
123 fact that the oil might be discovered on the Sampson claim would not necessarily—that is, the fact that oil might be discovered in its present location on the Sampson claim would not necessarily show the oil bearing character of the Rawley, would it?

Mr. Toland: I object to the question on the ground that it is immaterial whether it would necessarily show the oil bearing character, the rule being that if it will tend to the development, or tend to determine, the oil bearing character, it is within the Code.

The Court: Objection overruled.

To which ruling and order of the court the defendant here duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 18.)

A. Well, if it was—it would naturally show that it was oil bearing if there was oil got there, it would naturally show that it was oil bearing formation, and it would naturally show, as you went further east. You would have to go deeper for it.

Q. Well, it might be possible from your experience might it not, Mr. Irwin, from your experience in that territory, that if you went over onto the Rawley there might be such a fault in the formation as not to get a producing well on the Rawley?

Mr. Toland: The question is hypothetical and is based on conditions that are not in the testimony and is incompetent and immaterial.

The Court: Objection overruled.

To which ruling and order of the Court the defendant here
124 duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 19.)

A. The drill is the only thing that will tell. I have not had experience enough to say that there was oil there, or oil on the other, but as far as indications from the surface and from where we had drilled, why, a person would take the chances and invest their money there. I would have drilled a well at the same time further north, they were wanting light oil and wanting it right away, so I had to go back to the anticline and drill some more in that neighborhood. It never was found out that way at all.

At the time I was there there was no evidence of oil having been discovered on the Sampson or Silver claim that I know of. I don't understand so.

Redirect examination of John Irwin:

Yes, it is my observation that there is a great difference of opinion among oil experts as to just what identical point a well should be put down. As a matter of fact the same character of the Sampson claim, barring the fact that the dip makes it shallower to the West and deeper to the East, is the same all over. It is not always so. There is a formation, it is just owing to the oil rock you have. Oil rock is decomposed quartz, but the sand formation—I call it grindstone,—of that character, and in that formation you may not have over five or six feet, or ten or fifteen feet of oil rock, but it is just owing to the amount. You may have 60 feet of it; you may have five feet; you may have but a foot and it will produce in
125 quantity to the thickness and character of that rock. Whether the sand rock in which the oil occurs is thick or thin, you determine in the case of an individual well by sinking. We can generally tell, if the sand is real dry, what kind of a well we get before we tube it.

Yes, in going down in what you consider the most favorable locality, you might strike the thin rock, and then in going down in what you consider the most unfavorable locality you might strike the thick rock. To give you an idea, on the Smith farm in the Santa Paula canyon, which is 19 or 20 miles from the Rawley claim—you asked the question generally; I was giving the other just generally—in drilling on the Smith farm we had 600 feet of oil formation, that was burned up. That rock was hot, and it would chip up just like stone coal burned dry. Naturally, we reached the 1338 feet. We went through it. Just before we went through it, we got a barrel and one-half of liquid tar, pumped it on the 350-barrel tank, and the water, and in the water it would sink to the bottom. But right there in the Adams Canyon, onto the same formation there at 780 feet we got oil

that was from 24 to 26 gravity, cool and nice without a bit of sulphur in it, and they would pump—wells have pumped a hundred thousand barrels in a year, and they are right there in the same rock. As I told you, it was just burned up with sulphur. And right on further there is the Clark and Sherman property up on the mountain east a mile or so, or a couple of miles, light oil in it. It is near Toland's claim. I am just giving you this as a criterion. You
126 cannot always tell just what kind. As I said before, this rock out there has indications of having underwent a mineral change that the oil would not stand. In the case of the Smith well, comparing it with the location in Adam's Canyon (to the West) the difference is not in pitch, but in the distance away on the strike. And this is so in the case of the Clark and Sherman wells, a mile or two to the East of the Smith farm. That is a mile or two on the strike and not on a pitch. Well it is on a pitch in one way. The formation pitches to the East; everything from the head of Castaic in the neighborhood of Saugus to the Carpenteria (near Santa Barbara); you drop right down from one to the other. There is 35,000 feet of formation. From the surface indications it appears that the general formation on and over the Sampson, barring the fact that the local pitch is to the East (and on that account the rock is shallower toward the West) the territory is substantially the same all over, so far as appears, until it is tested by the drill. Where you would put a well upon that claim would be largely a matter of independent personal opinion on the part of the persons placing it, and in a measure on this question, would depend on whether you wanted to go deep or shallow. I would expect to go deeper and (further back to the East on the claim) than I would out in front (to the West on the claim). I would have selected a place for the well on the Sampson that would have caused me to go deeper.

Q. If you had plenty of money it might have been a good proposition, but if you were short of funds, the other would probably be a better test to start on?

127 A. I wouldn't have tackled it at all then. If I didn't have funds.

Q. But if you had funds proportionate to that in front, then you would go there?

A. I looked this country over before ever our parties (Union Oil Company of California, and its predecessors) took hold of it, and I told them it would take more money to open up the country than we had. Mr. Stewart says: "Do you think we have got 100,000-barrel wells out there in the mountains?" I said "Yes." "Well," he said, "I can get all of the money you want." I told him he was the fellow to pioneer the country, so that was the starting of the Union Oil Company, and that is the reason that all these gentlemen are in here now.

It is here stipulated as to the Rawley, Sampson and Arizona claims (subject to the objection of the plaintiff) that testimony with reference to claims other than the Rawley which is in controversy is incompetent, irrelevant and immaterial; that the location notices were

duly posted on these claims and were duly recorded in the proper offices, and the claims so monumented as to meet the requirements of the mining law, and that the title this initiated by the locators of said claims has come down in the case of each thereof by mesne conveyances to the Union Oil Company, the defendant in this action; also that the locators were citizens of the United States; in short, that title came down to the Union Oil Company through mesne conveyances from the locators. On the other hand it is stipulated by the
128 defendant that the notice of location of the Schley claim under which the plaintiff claims was duly posted and recorded, and the claim thereunder monumented but neither side admits that by stipulating as to the facts herein contained, the other side acquire any right by virtue of those facts. The deed from Richard Gird and J. C. O'Dell, to the Union Oil Company of all three of the claims, the Rawley, Silver (also called the Sampson) and the Arizona is dated September 18th, 1895, and recorded in Book 45 at page 555 of deeds, Ventura County Records; that the original locators of the Rawley claim were C. R. Gird, R. Gird, J. Gird, William Gird, J. R. Simmons, A. E. Davis, F. Matthews, Byron Waters, and the date of the location was March 5th, 1883; that the original locators of the Silver (Sampson) claim were G. B. Tanhill, Edward Roberts, S. C. Winton, J. W. Roberts, Thomas Juen, C. Bager, Frank Burford, B. Cohn, and that the date of the location was September 18th, 1877.

It was further stipulated that the well now being sunk by the Stockholders Oil Company on the Sampson, (Silver) claim (which is adjacent to the Rawley on the West) was, as testified to by E. L. Ward on the injunction hearing, then 365 feet deep; also that it is true as testified by said E. L. Ward on the injunction hearing that he went upon the well to drill about August 1st, 1910; that at that time time it had only been sunk to a depth of 145 feet; that at the time he testified it was 365 feet deep and that there was then 225 feet of 9⅝ inch casing and 328 feet of 5⅝ inch casing in the well; also that on said Sampson claim the work
129 on said well is still being prosecuted and has been at all times since prior to the commencement of this action; also said Stockholders Oil Company the lessee, is the lessee of said Sampson claim and as such is sinking such well thereon under a lease of the Union Oil Company of California, defendant.

All the matter in this stipulation pertaining to property other than that in controversy is subject to the objection of the plaintiff that it is incompetent, irrelevant and immaterial.

Mr. Cates, the attorney for the plaintiff, here introduced a map entitled "Map of portion of Little Sespe Petroleum Mining District, Ventura County, Cal., compiled from recent official sources by Waddingham and Murrary, 1910," and it is here stipulated that this map be filed among the papers as an illustration of the location of the property named in the pleadings, to-wit: The Rawley, or Schley claim, the Silver or Sampson claim, the Arcadie or Arizona claim, the Baltimore claim, the Syracuse claim, which is on the East of the Rawley or Schley claim, and that this map shows with substantial

accuracy the locations of these claims with reference to each other and their general position in Township 5 North Range 19 West, S. B. B. & M., in Ventura County, California, it being understood, however, as a part of the stipulation that the defendant does not admit the correctness of the naming of any claims, for the purposes of this suit, or the showing of any rights, or any other date, except the natural surface, what may be down in the way of natural ob-
130 jects, creeks and the boundaries of the claims, as to which we are stipulating.

It is further stipulated that the mining records of Ventura County and of the Little Sespe Petroleum Mining District show that the defendant and its predecessors in interest have made and recorded proofs of annual assessment labor, during all the years of the existence of the Sampson (Silver), Arizona (Arcadie), and Rawley (Schley) claims, except the year 1908. The defendant stipulates to furnish copies of the Affidavits of Assessment work on said three claims for the years 1905, 1906, 1907 and two such affidavits for the year 1909, which are to be considered and offered in evidence by the defendant as a part of its main defense, and by the plaintiff in rebuttal, the offer by the plaintiff in rebuttal being, however, subject to the objection of the defendant, that these affidavits are not acceptable as rebuttal testimony, said affidavits are received in evidence and marked "Defendant's Exhibit C and D."

B. B. GRINNELL, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

My name is B. B. Grinnell; I am 37 years of age; reside at Santa Paula, and am an oil man by occupation. At this time I am Superintendent of the Union Oil Company of California in Ventura County. I commenced in that situation in August, 1909. I am familiar with the Tar Creek territory, and it is under my juris-
131 diction as such Superintendent. I have been familiar with the property here in controversy since about the 15th day of August, 1909. I am acquainted with the boundaries of the Rawley claim and of the Sampson or Silver claim.

The counsel for plaintiff here interposed his standing objection to all testimony with reference to all claims except the Rawley or Schley claims, which is in controversy, upon the ground that such testimony is immaterial, incompetent and irrelevant, and the Court reserves its rulings as heretofore.

I first became acquainted with these claims by having them pointed out to me—a part of them—by Mr. Vance Robbins, on my first trip back through that country, and Mr. Irwin went back with me and showed me the corners on a number of claims and from those corners I ran the lines and proved out the boundaries pretty near. I had maps of the locality and made it my business to familiarize myself with it. For the year 1909, we did work upon those claims for their benefit. We built a road across the Sampson and a rig grade on the Rawley. We also spent several hundred dollars on the main roads coming back into it, in that year. That was for the benefit of the

Rawley, with other claims. Including all of the expenses, the value of the road, leading from the Sampson from the Southwest onto the Rawley, and the rig grade made in the year 1909. The expenditure would have cost $150; I did not keep the time for that particular work by figuring all of the actual expenses, which would cost $150.00.

I saw rig timbers on the Rawley claim during the summer of
132 1910, that belonged to Reynolds and Mann at one time. In December, 1910, just before the mix-up started, I did work on the Rawley claim.

The Court: The 25th of November this case was filed.

The Witness: The 25th? Then this was along before the 15th and 20th,—between the 15th and 20th—of November. We were in there building a rig grade, and the road and completing a rig grade, and cleaning it out, and the road in there to it, to drill a well. We were there several days, four or five days with some ten to seventeen men. The crew varied. We went in there in the day time and did the work in the day time. There was no interruption of the work on the first day nor the second. I think it was on the third day there was an interruption. We went in there and worked peaceably upon that ground for at least two days, and on the third day—to make a rig grade and drill a well for the Union Oil Company. The occasion of me going there, was that I got instructions to order a rig and drill a well on the Rawley. I did that the same day that I first knew that the lessee or its representatives had stopped. There was no person in the occupancy of the ground that we occupied or worked upon during the two or three days other than myself and our men. There were some parties in that vicinity. They were building a rig close to us, but there was no interference for the first day or two. I think the interference commenced on the third day. I am not positive that it was the third day, that we had been working.

133 It is here stipulated that the reason the defendant is not still working and sinking or preparing to sink a well on the Rawley claim is because of the commencement of the action and the issuance of a restraining order against it, herein by the Court.

There is a road on the Rawley claim running from the West side to the East side; and there are two, I think, with the one that we built; the other road goes across the claim on to a small flat in the East line of the claim. The Syracuse claim is on the East side of the Rawley. This road if it does not reach the Syracuse claim, makes it possible to get to it. The road reaches a flat, and there is travel across there to the Syracuse claim. The work done by the other people when we were working on the Rawley claim in November, 1910, was North and East of where we were working, possibly 300—200 feet maybe—from the west line of the Rawley claim. We were between 40 and 60 feet across the West line of the Rawley claim; that is East of the West line. It was necessary to run a grade clear in. That was where the hole,—the center—of the grade would have been. The other people were working I should judge twenty or thirty feet North of us; that is a line through from where we were working perpendicular to the West line of the Rawley claim, would be twenty or thirty feet South of a similar

line through from where they were working. It may have made their rig further in from the line than I thought. I made the estimation once or twice that a 20-foot plank would reach from their foundations to our rig. There was a bluff between.
134 They were located on a bluff that would place the top of our rig level with their foundation. They were thirty or forty feet away from our rig site to the East. That is, their hole would be 30 or 40 feet I presume East of where our road would be, which is not as far as I stated before. The road twists around to get in there and I may become mixed on the distance. They had no camp there where they were working. Their camp was back on the East side of the Rawley or on the West side of the Syracuse. I always supposed it was on the West side of the Syracuse. I give that as my best judgment.

This road that has been spoken of led to that camp and beyond it. It was a continuation of a road up on the bluff on the Syracuse. There was a road on the Syracuse that was a continuation of this road.

Q. Has there been work done up there?

Mr. Cates: I object to the question as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

To which ruling and order of the Court the defendant duly excepted, and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 20.)

On one or two different times I had conversation with Mr. Brunton, the gentleman who testified here in regard to that road. I asked him how he was getting along with his road, and he told me that there was some pretty hard sledding on a bluff that he was going through, blasting. That bluff was on the East of the rig
135 grade. He told me that he was in a hurry to get that road completed,—because he had some men with money that were going to drill on the Syracuse. That was before the tent was erected on the Rawley. It was in the early Spring or along close to the first of the year, 1910. It was after the first of January: I don't know when it was with reference to the first of February. It was before that tent—if the evidence shows when that tent was put on, it was before that.

That was the first time I knew that they (the Bruntons) were not working there for the Union Oil Company. The first time I knew that they weren't operating on a lease on the Rawley and a lease to some other property, and I supposed all the time this road was going on that they had the Rawley too. Mr. Brunton did not say anything to that effect direct. They bought the Syracuse. The deal was closed very early in January. The Union Oil Company of California had nothing to do with the Syracuse.

Mr. Cates: I move to strike out all of the testimony that they bought the Syracuse, or who had bought the Syracuse, or any testimony as to the purchase or sale of the Syracuse.

The Court: The motion will be granted.

Mr. Toland: I don't understand how far the motion goes.

The Court: At any rate, to that state of the case that they bought the Syracuse.

To which ruling and order of the Court, the defendant duly excepted, and here assigns the same as error prejudicial to the
136 defendant.

(Defendant's exception No. 21.)

Cross-examination of B. B. Grinnell:

I said that I know the boundaries of the Rawley claim. I don't know whether I said I knew them all or not. I know the West line. I know it bacause we run lines from monuments with a compass, and proved them up with our maps.

Yes, in January, 1910, I knew the lines of the Rawley. I knew where the two corners were,—Southwest and Northwest,—and also where the West line of the Rawley was. I knew where the South line of the Rawley was at the same time; that is, I knew the general direction of the South line of the Rawley. I am not positive that I knew just where the East line of the Rawley is now.

Yes, I have testified that I don't know whether that camp was on the Rawley, or the Syracuse. As a matter of fact I do not know.

Vance Robbins is a man that had charge of the Union Oil Company's property here in Ventura County before I came. I have been to the two West corners of the Rawley claim. When I say that work was done on the Rawley in 1909, that there was a road across the Sampson, I refer to the Slocum work that was put in there from the main road up that Little Canyon. The cost of putting that grade or road, or both, was $150.00. I would not have done it for that. It went between 30 and 60 feet onto the Rawley.

I think the cost of the work on the Rawley would be half
137 of it or more. I had 17 or 18 men out there for three days.

It was a difficult place to do anything with. Because I didn't keep that time (on the Slocum work) it is a cinch I wouldn't have taken the contract to do the work that is on the Rawley, at that time for $50.00.

I did not testify that there was $150.00 worth of work up that canyon by Slocum. I testified that the entire expense would amount to that. The getting of that work done. It was not possible to drive back there when we went back. We had to do this work in order to get Slocum in there. You couldn't travel over that road North of Tar Creek, when we went in there. I said that the grade made by Slocum from the main road up the canyon onto the Rawley was worth $150.00. I said the entire expense of that matter would be $150.00.

I couldn't say positively what was the value of that work done by Slocum, if I knew the time—I know if I would send men out there to do the same kind of work that would bring in time sheets to the amount of $100 or $150 I would O. K. it and wouldn't criticise it, and that would include everything,—their making it from

Fillmore out $150.00. Well, make it $100 on the Sampson and Rawley. I am satisfied that that would be correct.

In December, 1909, I had charge for the Union Oil Company. By $100.00 on the Sampson and Rawley, I mean I include the road cut in to make a grade. Slocum did that. He had to do it to get in. Slocum started from the main road and went up the Little Canyon onto the Rawley, and the value of that was
138 $100.00. I know that Slocum had some men out there working in 1909 doing this work that I have testified about. That was all the work they did. I beg pardon—they did run a line across the Baltimore I believe. I wouldn't be sure that it was them or someone else that did it. By running a line, I mean they trimmed out the brush from across the boundary line. They just cut through the brush, that line you have seen running up the road.

Q. What would be the cost of that or the value of it?

Mr. Toland: I object to the question as incompetent, irrelevant and immaterial, it does not relate to any of the issues in this case.

The Court: Objection overruled.

To which ruling and order of the Court the defendant duly excepted and here assign- the same as error prejudicial to the defendant.

(Defendant's Exception No. 21.)

I don't know about that work. Barry ought to know, he has been cutting those same lines for me for a long time. It would cost $25.00, no more than that. Slocum did not do any other work out there at that time that I know of at all. I don't know that Slocum did this work.

Mr. Toland: I move to strike out all of this testimony relative to work done on the Baltimore claim as incompetent, irrelevant and immaterial, for the reason that the only work here in question done by Slocum would be the work on or for the benefit of the Rawley claim.

This motion was denied by the court.

139 To which ruling and order of the court, the defendant duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 22.)

Yes, I had charge out there all that time. I had a foreman out there, instructed to look after these men and see that they did the work on this particular piece of property. His name was Thomas. He was on the stand here once before, and he is here in the court room now. I don't know the Shenandoah claim. I testified that the value of the particular piece of work on the Baltimore claim was $25.00. Slocum did not do any other work on the Baltimore. If there was any other work done on any other claim by Slocum, I didn't know it.

Counsel for plaintiff calls attention of the witness to the affidavit

of Thomas A. Slocum, showing $300 worth of work done on the Rawley, Baltimore and Shenandoah claims, and asks:

Q. What do you say as to the correctness of the statement in that paper?

Mr. Toland: I object to that question as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

To which ruling and order of the Court the defendant duly excepted, and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 23.)

A. I don't know this Shenandoah claim. I don't know where it is or what it is. You say it is the claim North of the Sampson.
140 Well, if those fellows were out there, I didn't know it. The work done on the Rawley and Baltimore is all that I have anything to do with. I have a letter instructing me to see that this work was done and that these fellows got on the property, and Mr. Mitchell claimed to Slocum that he wasn't on the property and Slocum came back to me about it.

In regard to the several hundred dollars spent on the main road leading back to the Rawley in the year 1909—the road was repaired from Kentuck to the foot of the hill and partially rebuilt in November, I think, of 1909. This work was all done the last of November, or the first of December. This work was all done when this company had camps and material there to do the work that we had that year.

No, the road from Kentuck to the bottom of the hill and from the bottom of the hill to the White Star oil properties and the Cosmopolitan properties were not kept in repair by these companies. During the whole of the year 1909, they were hauling stuff through those roads, and I know that we paid our portion of keeping them in repair all of the time. I don't know how much we paid, but it is on file with the clerk. We spent money to repair the road North of White Star and Cosmopolitan property through to Tar Creek, in 1909. I don't know how much we spent. We had a bunch of men out there for several days during the last of November and the first of December, 1909. We had to work our way out there. There had been some rains and washed those roads out. I couldn't tell you
141 just how much money we spent North from the Cosmopolitan and White Star property, as far as Doe Flat on the main road. It was more than $100. Better than $200, but probably not $225.

I saw rig material on the Rawley claim belonging to Reynolds and Mann. I know it belonged to Reynolds and Mann, because it was shipped to Fillmore and Casner got a telegram to unload it and at that time Reynolds and Mann had rented the Stockholders' team through a man by the name of McCarty, and he was the man that hauled the lumber. That is the way I know it.

Q. Didn't you know long before you attempted to go on the Rawley with the 16 or 17 men in the latter part of November, 1910,

that Reynolds and Mann or the Middle Sespe Oil Company had not complied with their lease?

A. No. The first I knew of it—do you want me to tell you all about it?

Q. Just answer the question, yes or no.

—. I testified that on the same day that the work on the Rawley claim was not operating under a lease, that I made preparations to drill a well. It was earlier than November. I don't know if it was in October. I could find out. I have got a letter here that I will tell you. My preparations consisted of sending specifications in for a rig for the style of rig that we used. I got the material shipped right away and went to gathering up a force of men and went down to the city (Los Angeles) to see about the business. I wouldn't be positive that it was in October, wouldn't be positive of the date. I could tell if I could look at the date of that letter that is here
142 in court. I knew early in October that Captain Stowe was making preparations to drill a well on that property. I thought until this particular morning that Captain Stowe was working under a lease from the Union Oil Company, and he told me in the depot (at Fillmore) and then I got busy.

Q. Until what particular morning?

A. The morning that I got this rig stuff ready and prepared to drill a well.

Q. You thought so?

A. Yes, I supposed all the time that he was operating under a Union Oil Company lease. When I went on this property the latter part of November they had a rig pretty near completed. If that camp that is there is on the Rawley, and not the Syracuse, they had it also. It was erected anyway. I went on the Rawley at this special point down in the canyon, so near the rig that was being erected by Captain Stowe, because it looked like a race and it was the easiest place to get on. That is not the only place I could have got on the property. I had several reasons for going on there.

A. You could have gotten on any place if you had built a road. We used the same road, repaired a road. Well, that is we used the same grade and the back end of the same road, I believe. I wouldn't be sure about that now. I know that we didn't use the front end, we went in different. We kept right on the main road a little and went right in above, where Slocum road was; but we ran in this road back of this grade. We didn't take the same entrance he had, be-
143 cause we couldn't make the turns there, wasn't practicable.

I never knew J. P. Brunton as lessee of the Union Oil Company. I knew the Bruntons, and his name was on the card that they gave me. J. P. and J. W. Brunton of the Brunton Company. I could not testify of my own knowledge that J. P. Brunton ever leased any land from the Union Oil Company.

I had Charles Miller's statement to the effect that J. P. Brunton bought the Syracuse; that is, that the Bruntons were the people that bought it. That is the only way that I know—I know them.

Q. You don't know?

A. No.

O. J. STOWE recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Toland:

Q. What is the showing for oil in the Silver or Sampson or Sulphur claim?

The Court: Subject to your general objection, Mr. Cates, heretofore made.

A. You mean what are the present indications?

Q. Yes sir.

A. Well, I don't know, only from the report I get from the driller when he comes or sends in some word. At one time they had a little showing——

Mr. Cates: I move to strike out the answer of the witness as not responsive to the question.

144 By Mr. Toland:

Q. You get regular reports from the well?

A. No, not regularly. They don't come in regularly.

The Court: It will go out.

To which ruling and order of the Court the defendant duly excepted and here assign- the same as error prejudicial to the defendant.

(Defendant's Exception No. 24.)

We get reports from time to time from the well.

Q. In the regular course of business?

A. Not regular reports. They send in some word or the driller comes in and goes to his home at times. He is there now with a sick wife.

Yes, those are the reports on which I act in the conducting of business there. That is the knowledge and information that I have that I carry on my business by.

I don't know whether that well has a log or not.

Young Mr. Ward is in charge of the work out there.

Yes, the work is still going on out there. They report that it is.

Mr. Cates: I move to strike out the answer of the witness.

The Court: It will go out.

To which ruling and order of the Court the defendant duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 25.)

Q. Are you doing work out at that point? Does it come through you, as a part of your official business?

A. Yes, I am paying the bills and doing the work.

145 Q. Is it intended that it shall go on to a completion?

A. Yes sir.

Q. It is being carried on in good faith?

A. Yes sir.

Q. By you, as the man who directs the work, and pays the bills?
A. Yes sir.
Q. You expect to sink that well to a completion?
A. Yes sir.

Mr. Cates: I move to strike out all of the questions, statements and answers in this examination on the ground that it is immaterial, irrelevant and incompetent, and on the further ground that the witness is not testifying from his own information, or from his own knowledge.

The Court: I think so, and I think—that——

(Discussion.)

what he is doing about the matter. The testimony that he is paying the bills; that the company are pursuing the work as far as they know, is probably admissible.

Mr. Toland: The other testimony is all in the record.

Mr. Cates: I have stipulated already, if your Honor please, that the work is progressing. Whether they are shut down this minute, I don't know.

The Court: I think so. I think that that is sufficient, the motion to that extent will be granted.

To which ruling and order of the Court the defendant duly excepted, and here assign- the same as error prejudicial to the defendant.

(Defendant's Exception No. 26.)

146 Cross-examination of O. J. Stowe:

I have been at that well a few times. I couldn't say that I ever saw any showing of oil there prior to August 1st, 1910.

Defendant rests.

C. J. MILLARD, a witness called on behalf of the plaintiff in rebuttal, being first duly sworn, testified as follows:

By Mr. Cates:

My residence is Santa Paula, I am of age and in the oil business. Have been nearly twenty-four years. I am familiar with the territory in Ventura county, known as Tar Creek, and Little Sespe Oil Territory.

I first started in the oil business in that territory in '87 and have been connected with it more or less up to 1896, and then I was put in charge of it as foreman in that district for the Union Oil Company, the defendant here,—of all of the holdings of that company in the Sespe district, beginning at the south line of the Kentuck. It is in Township 5 North, Range- 19 and 20 West. The territory at the foot of the hill, the Four Forks, is in Township 5 North, Range 19 West, and Tar Creek is in the same Township and Range. I couldn't tell exactly how far North my supervision extended in that Township and Range over properties claimed by the Union Oil Company.

147 It ran North to what we call Bucksnort. It would be one mile North of Squaw Flat.

From about August 1st, 1896, until November 1st, 1904, I acted as foreman for the Union Oil Company, in charge of that territory. During all of that time I became and was familiar with the various claims and holdings of the Union Oil Company in that district. I am acquainted with a claim by the name of Rawley. I never knew a claim by the name of Schley in that territory. During all the time that I had charge for the Union Oil Company in that territory I did not do or cause to be done any work upon the Rawley, for the Union Oil Company. I was in charge there in the years 1900, 1901 and 1902.

Q. What did you do along about that time, locating it as definitely as to time as you can, in regard to the moving of machinery from that district, if anything?

Mr. Toland: The question is incompetent and immaterial. The district is a large district and the question is indefinite. It is incompetent and immaterial also in the light of the testimony here for the reason that the plaintiff did not ever initiate any claim as to the property here in controversy until February 5th, 1910, at a time when the evidence, uncontradicted so far shows that the Union Oil Company was actively in possession of the Rawley claim, had leased it to tenants, who had covenanted under lease here in evidence to drill it, and the tenant, pursuant to a covenant in that lease, had done

148 and made proof of the annual work. Objected to also as not being rebuttal, because it was a part of the plaintiff's case to show that the territory was unappropriated.

The Court: Objection overruled.

To which ruling and order of the Court the defendant duly excepted and here assign- the same as error prejudicial to the defendant.

(Defendant's Exception No. 27.)

By Mr. Cates:

Q. Mr. Millard, did you ship machinery or pipe or other materials out of the district north of Tar Creek in along about 1901 and 1902?

Mr. Toland: Objection to the question as being incompetent and immaterial, it is so general it does not relate to the territory in question and I do not apprehend that the witness might know why he shipped it. He is not qualified to say if he did not know why.

The Court: Objection overruled.

To which ruling and order of the Court the defendant duly excepted and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 28.)

A. I did.

Q. What were your instructions, Mr. Millard, as to the shipping of--gathering of pipe and machinery and other material and shipping it?

Mr. Toland: I object to the question as incompetent, and imma-

terial, because the instructions on such a matter should be in writing,
and they should be here. This is not the best evidence, and
149 the competency of the person who gave the instructions, if he
did give them, should be shown.

By Mr. Cates:

Q. Under whom were you working as foreman there, Mr. Millard?

A. I was working under a man by the name of P. D. McConnell, in 1901. He occupied the position of field superintendent with the Union Oil Company.

The instructions received from him as to my duties from time to time, were partially verbal, sometimes in writing.

These instructions as to the gathering up of machinery, materials and pipe were not given in writing, they were given to me verbally by Mr. McConnell.

I have always received my instructions from Mr. McConnell, as foreman.

Q. During all of the time that he held himself out as superintendent of the Union Oil Company did he give you instructions as to what you should do in your special territory?

Mr. Toland: Objected to as incompetent and immaterial and irrelevant.

The Court: Objection overruled.

To which ruling and order of the Court the defendant duly excepted and here assign the same as error prejudicial to the defendant. (Defendant's Exception No. 29.)

I shipped material and machinery from that territory during the period—the year 1901 and 1902. It consisted of boilers, engines,
casing, pipe, rig, timbers, rig irons and tools. It came from
150 claims north of Tar Creek, the Twilight and the Black Jack.

Mr. Toland: I move to strike out this testimony as incompetent, irrelevant and immaterial; it is not related to the property in issue.

The Court: Objection overruled; motion denied.

To which ruling and order of the Court the defendant duly excepted, and here assigns the same as error prejudicial to the defendant.

(Defendant's Exception No. 30.)

The Witness: Also from the Sespe and Hogshead and Los Angeles Claims, the Kentuck; and possibly several more that I don't remember. I remember taking stuff from those central points. I shipped the material to Bakersfield. It is a pretty broad question for a man to answer, whether during the time that I was foreman from 1896 to 1904, what property was operated by the Union Oil Company North of Tar Creek, either by drilling the wells or pumping the wells. If you will pick out certain claims I will tell you.

During that time the Union Oil Company did not drill any well on the Sunset.

Mr. Toland: I desire to save an objection to this line of testimony

as being incompetent and immaterial on the ground that it is remote and does not prove any issues of the case, and that is prior to 1910.

The Court: Objection allowed.

The defendant here assigns these rulings of the Court admitting testimony in regard to the removal of material from all of the claims named, from the Black Jack down to the Kentuck as being
151 error prejudicial to the defendant.

The Witness: The Union Oil Company did not drill any well on the Twilight claim, nor on the Arcadie nor on the Baltimore, nor on the Sampson or Silver, nor on the Rawley, nor on the Shenandoah, nor on the Santa Fe, nor on the Black Jack. They did not operate any well on the Black Jack.

Yes, they drilled on the Black Jack between 1896 and 1904. In 1900 they drilled and got a well on the Black Jack and operated the property. I couldn't say how long, but they were not operating it when I left their employ in 1904. Since 1904 I have been over the ground two or three times each year. I remained in the employ of the Union Oil Company until about November, 1904.

Q. Do you know whether the Union Oil Company did any work on any of the properties that I have enumerated in 1904?

Mr. Toland: I interpose my general objection that this testimony is incompetent, irrelevant and immaterial, for the reasons heretofore stated.

(Defendant's Exception No. 31.)

A. I was out through that country the last of the year, 1904, and the beginning of 1905, but I didn't see any evidence of any work. If there had been any done, I think I would have saw it. I was very familiar with the territory and the boundaries of the claims. I didn't see any evidence of any work done by the Union Oil Company in that territory in 1905. I think if any work had been done,
152 I would have seen evidence of it. I had the opportunity and it would have been very obscure if I didn't see it. I didn't see any work done by the Union Oil Company in 1906 or 1907. None was done that I could see. I had opportunity to observe if any work had been done for 1908, but I saw no sign of it. Yes, I was there in 1909, I was out there at the time a well was being drilled on the Silver, known as the Sampson,—I call it the Silver. I saw nothing in the way of work, only that the road was repaired from Tar Creek to that point. I am familiar with the lines of the Rawley. I know all the monuments and corners where the corners are located, all except the Northeast corner. Have been on this claim several times. More or less for 23 years. It is pretty good hunting ground there or near the Arizona. I never saw any evidence of any work having been done there by the Union Oil Company.

I never have done any myself for the Union Oil Company on the Rawley.

I was there in 1909 and 1910. In the beginning of 1910 there was some work pointed out to me as work being done by Mr. Slocum. I didn't see any being done at that time. I didn't see the extent of

the work. I saw it just casually as I rode along the road,—walked along the road.

Cross-examination of C. J. Millard:

Yes, sir, during the years that I was out there I used to do work myself, I suppose, on behalf of the company or have it done as
153 the annual work on those claims up to the time I left. I don't know as I done any work on those claims in the year I left.

Q. No, but say, up to and including 1903, you did work in that district, which was applicable to those claims?

A. Yes, sir.

Mr. Cates: I object to the form of the question and move to strike the question and answer out as to whether it was applicable.

The Court: It will go out.

To which ruling and order of the Court the defendant duly excepted and here assign the same as error prejudicial to the defendant.

(Defendant's Exception No. 32.)

I don't remember if I made the Affidavits of Labor each year myself. I did sometimes.

Q. When you did, had you done work to the extent called for by the Affidavit at some place in the territory that would—either upon the claim to which it was said to refer or upon some road or in some manner contributed to the development of it?

A. I would like to explain a little bit. I would like to explain why I signed that affidavit of labor if the Court will allow me.

I made the affidavit.

Q. From time to time I suppose it was probably in the line of your duty as being the person who was acquainted with what was being done?

A. I was supposed to do it as foreman working for the Union Oil Company, and the papers placed before me all fixed to
154 suit the Union Oil Company. They says, "Millard, I wish you would make affidavit of this labor this year." I went before the notary and signed that, made affidavit and signed it. I don't know now how much money they put in. It was in there several thousand dollars, hundred thousand dollars.

Q. You always knew that something had been done, else you would not have signed the affidavit, would you?

A. Sure.

Q. Whether that exact number of dollars or not was the thing that you are not sure about?

A. I don't know how they segregated their work up to this. Yes, in a way, I always knew when I made the affidavit that there had been work done in the field. Let me explain. I was instructed to do this work. I done the work according to my instructions, only from the Superintendent. That is where I done the assessment work. If I swore to a lie in making those affidavits, why I was responsible in one way or in another one I wasn't.

The Witness: I won't worry about it.

By Mr. Toland:

Q. If the grade for the steep hill from the foot of the hill up to Oak Flat should slide in you could do work on that as you understood it in those days, couldn't you, Charlie, for all the claims beyond that?

A. But I don't know the exact amount. I didn't inquire. I couldn't know. No, I don't know as to dollars and cents. I don't think I made affidavits of the annual work every year up to the time I left. I made affidavit only two years. It may be more.

155 The county records will show how many affidavits I signed.

Q. The abstract which we have from the record seems to show that you made affidavit on January 25th, 1900, December 31, 1900, which apparently would be for the years 1899 and 1900. I show you these affidavits for the purpose of identifying the signature and determining whether you made the affidavits for the year that is there covered.

Q. Did you make that affidavit, Mr. Millard?

A. Yes sir. My name is signed to it.

Q. Did you make this one. It is dated January 23rd, 1903.

A. That one, yes sir. I also signed that one dated January 28th, 1903. It had to do with the annual work for that year. I also signed this affidavit dated December 31st, 1903, and this one dated December 5th, 1901.

Q. These affidavits all relate to the Rawley claim. If you made affidavits of work done—made affidavits for the Rawley claim—the work done or improvements made? They were made for the Rawley claim?

A. The affidavit was made and the list of claims was added to it. The road was past the Rawley claim when those affidavits were made. It did not necessarily have to be kept open, and was not. It was not closed. It did not have to be kept very much in repair. On a portion of the road that we used, I would work in those years on repairs, but from Tar Creek to Silver Oil, we didn't do any re-

156 pairing only at times. At times we would, of course, but to keep the road open it wasn't practical and we didn't do it.

Redirect examination of C. J. Millard:

I didn't use the road from Tar Creek to the Silver Oil during that time.

Recross-examination of C. J. Millard:

We used it in getting out that stuff in a way, sledded it over or snaked it over, in any way you could get it, but what you would call a practical open road, we never had it there for ten years. Out to Tar Creek, about the south line of the Black Jack claim is about as far as we went. The Black Jack is about a mile, I guess, south of the Rawley, and the Twilight, I think, a quarter of a mile, or so. I think the Baltimore is a quarter of a mile, and the Twilight lies South of the Baltimore.

Yes, at the time that stuff was hauled out there there was great

activity in the Bakersfield field, and in a field like Tar Creek field, we frequently hauled material from one part of the field to the other, if it was not needed in the new place. An oil company like the Union might take material from the Tar Creek to the Piru field, and from Bardsdale to the Tar Creek field, at sometimes, though not very much, if they wanted something very bad. It might be good policy sometimes to do it if material was hard to get and scarce. I can say that it was not practiced in that particular field from Tar Creek to
Piru or Bardsdale or anything like that. I don't know any-
157 thing about whether it was practiced from Bardsdale to Piru.
I don't have charge of that. I know nothing about the Santa Paula Creek field to Adam's Canyon. I know that this stuff was billed to Bakersfield, and the Union Oil Company was—I think it was at Claremont, I don't remember. It is ten years ago. The Claremont is a subsidiary company of the Union Oil Company. I think it was about 1901 or 1902, it might have been 1900.

I didn't know anything about the policy of doing that or why it was done. Out of natural curiosity of the Bakersfield just being opened up I inquired into it, and so forth, and my superior gave me answer, yes.

Redirect examination of C. J. Millard:

Well, I expect the Black Jack would be a mile south of the Rawley claim by the road.

WILMER AKERS, a witness called on behalf of the plaintiff in rebuttal, being first duly sworn, testified as follows:

My name is Wilmer Akers, I am 49 years old. I live at Sespe, near Fillmore, Ventura County, and am a stockraiser. Have lived in Ventura County over 35 years. I am familiar with the territory contained in Township 5 North, Range 19 West, S. B. M., and the territory known as the Little Sespe. I have been through there a good many times. Yes sir, off and on for thirty years. I was in
that territory in 1907, working for George Burson, running
158 cattle in there. I went from what they call the Stone Corral toward the Hot Springs, and Hot Springs Trail to the Agua Blanca. I am familiar with the territory north of Tar Creek up to what is known as Doe Flat. The well that is being drilled by the Stockholders Oil Company which has been testified about here is close to Doe Flat, a little Southwest of it. I was in that territory frequently in the year 1907 and in the beginning of 1908. I don't think there was a month past but what I was over there looking after cattle. That was my business there. There was no work done that I know of in the territory north of Tar Creek in the way of roads or other work on claims in the year 1907. I had a good opportunity to observe. I was riding over there looking after cattle. Sometimes when I ran the cattle around and couldn't go on horseback, I would go on foot. I should think I covered the territory thoroughly, on foot and on horseback. In 1908, I had a like experience as to covering the territory. I saw no evidence of any work being done North of Tar Creek, in the year 1908. In the year 1909 I was not often

in the territory, but I was there some. I saw in the year 1909 preparations for work by the Stockholders Oil Company. That was all I saw. I had gone up there—I guess it was in July or August, 1909, that I could see anything about that. I was there in the year 1910. In the early part of that year I didn't notice anything north of Tar Creek that I considered done, only on the road from there to the Stockholders Well, and on the Rawley road, on the grade
159 from there up—must be a quarter of a mile from the end of the road from the road to the end of the road that I seen graded. I never noticed the work known as the Slocum grade down the Canyon that I know of. Wasn't out there much in 1910, though. I was through the territory. On the Rawley there was some lumber there and some road work done. I didn't notice any other work done North of Tar Creek that I recollect of.

Cross-examination of Wilmer Akers:

I am familiar with the Little Sespe and Tar Creek, and with the region North of Tar Creek as far as Stone Corral, Agua Blanca and the Sespe Hot Springs. I have been clear over there, yes sir. From the mouth of Little Sespe to the Foot of the hill I should judge that it is pretty close to a mile and three-quarters. I don't know exactly. Well, of course, any time that any rain comes that road fills in but it don't take as much as a fellow would think to fix the road, but it has to be fixed every time there is a big rain. As a rule when it rains it has to be fixed. I should think that from the foot of the hill to Tar Creek station over the hill, it is three and a half or four miles, and from Tar Creek station over to the Rawley claim by the way the road runs I should judge it is about four miles. Yes sir, all of those roads have been used from the foot of the hill over towards Tar Creek station during all of the time I have spoken of from 1907 down to 1909, have been in use. I think it was cleaned out in 1908 or the latter part of 1907 or 1908. I don't know for certain whether it was 1907 or 1908, but it was used by the Stockholders' well.

I am not familiar enough with the names of the claims
160 to say that it is on the Sampson, but it is right west of the Rawley. Yes, that road has been kept open to the public traveled road all the time since then. It was cleaned out and made a road. All of those roads are steep and very much subject to injury from the winter rains, but they don't wash out much. In canyons, of course, there is some wash. It *had* got to come a very hard rain but what it will benefit the grade from the foot of the hill. A small rain benefits the road. It gets quite dusty and a little rain helps it. Not only washes the dirt away, but packs it. I don't think a sharp rain damages that grade much. Yes; it has to be repaired every winter some. Yes; there are places on that road where it is made by being held up on the lower side by pipes and stays. They were put in there a good many years ago, and they are there yet most of them, but sometimes they cut out, it is seldom. I don't think it is an expensive road to keep up. Yes, it is a very steep grade. That road goes through to Oak Flat. The road from Oak Flat to Four Forks is all rocks, and it hardly ever gets away.

I think they repaired it this season or last—last season I think. There ain't no road I guess but what needs to be repaired some. That isn't what you would call a steep road from Four Forks on. I don't call them very steep.

Q. Of course you are used to mountains, I know. Not steep for goats or deer.

A. No, sir, or burros.

Q. But as wagon roads.

A. Autos might not go over it, but any ordinary team
161 would go over it. Yes, sir, those roads have to be repaired more or less each year, ought to be.

Yes, from Tar Creek to the Stockholders; it is a long foothills largely, and down through small hills—natural roughness. That is a road that is difficult to keep in repair and it ought to be kept in repair. There is one of those places that washes out. It is a sliding shale country. I was there in 1907 and 1908. Mr. Ward said he was opening up the road that year for Stockholders. I have only his word for it. It was done though to my knowledge. From that time down to this time it has been kept in repair so that travel back and forth to that claim could be maintained.

Redirect examination of William A. Akers:

Speaking of the road North of Tar Creek and its having been kept in repair, besides the Stockholders Oil Company and the Union Oil Company there was Snyder who is foreman for the Galey Oil Company, and he put men on there to open that trail from the road along Spring Canyon. He has been working there. They cut off what they call the slanting bridge and put a road around it. Made a road around Spring Canyon. He did other work North of Tar Creek during the year 1910. I couldn't say about how much work Mr. Snyder did North of Tar Creek—what they rest or anything like that. When I passed through there he had about four to six men working on the road.

Recross-examination:

Mr. Snyder is foreman of that company there and also the
162 Galey wells. He told me that he is lessee of the Union Oil Company and that he was doing work on the claim operating on the territory which he had leased from the Union Oil Company. I am not certain that he has got a lease, but I heard he has. I don't know who he got the lease from, I never inquired.

It is here stipulated by counsel for the plaintiff that Mr. Snyder is operating a well on the Moody Gulch property on a lease from the Union Oil Company.

Redirect examination:

The Moody Gulch property is west of the Rawley. I judge the first well is about a mile and three-quarters from where the road goes into the Rawley claim.

E. L. WARD, a witness called on behalf of the defendant at the hearing of the application for an injunction *has* in this case on December 1, 1910, being first duly sworn, testified as hereinafter set forth, and it was stipulated at the trial of this case that by reason of the absence of said witness caused by the serious illness of his wife, his testimony, hereinafter set forth, may be deemed as given at the trial and used as evidence introduced by the defendant.

Direct examination by Mr. Toland:

My name is E. L. Ward. I reside at Fillmore, Ventura county. My business is that of a driller, and I am engaged at that business at this time at Doe Flat, on the claim west of the Rawley that
163 is here spoken of and in the employ of the Stockholders Oil Company. I have been working there drilling since the first of August, 1910; that well I should judge to be about a thousand feet from the east line of the claim,—that is, from the West line of the Rawley claim, about the same distance from the South line of the claim. At the time I first went to work on it that well was open and was equipped with a complete drilling outfit and there was a cabin on the claim. The well had already been sunk to a depth of about 145 feet.

Mr. Cates: I object to the introduction of any testimony relative to the Sampson, Doe Flat or Sun Flower claim, which I understand to be the same piece of property, on the ground that it does not prove or tend to prove any of the issues involved in this proceeding, that it is incompetent, irrelevant and immaterial.

The Court: It will go in subject to your objection and also to your motion to strike out.

I have been working there on that well ever since August, 1910, and am now working there except that I am down here on this case and that well has now been sunk to a depth of 365 feet.

Q. Have you found any oil in the well?

A. Yes, sir.

Q. At what depth did you find the oil?

A. Well, about 210 or 215 feet we got some, and 265 feet, along in there, we got some more. Yes sir. I have been working there continuously, having some stops, as they usually do, for material and the like of that, a few days at a time, from one to three
164 days, but we have been prosecuting the work as rapidly as it could be done under these circumstances. I know the position of the Rawley claim.

Cross-examination of E. L. Ward:

And have been on it, yes, sir; don't think I have been all over it. I know one of the corners, the southwest, and one of the boundaries of the Rawley. The southwest corner of the Rawley claim is the southeast corner of the claim I am working on and the two claims join in *in* that line. When I went to work on that claim, the Sampson, August 1, 1910, I found the well in pretty bad shape. The hole was crooked and some iron in it. I could not say how

much. I drilled the iron up. We have two strings of casing in, all of the first one, 6⅝s casing, there are 225 feet; the second string 5⅝s casing, 325 feet long, I believe, and the well is about 325 feet deep. Before the first of April I was not familiar with this property. Before the first of April I knew where it was, but I didn't know anything about the so-called Schley.

Q. Now you say you got some oil. When did you get it?

A. We got it this year (1910) in September; I think, we got a little, what drillers call a showing, a color. It was gotten at about 240 feet, and at 265 feet we got just the color. We didn't get oil in commercial and paying quantities. It wouldn't pay to perforate there to let that oil in.

165 Tuesday, Feb. 14, 1911.

Present: Hon. Robert M. Clarke, Judge; J. B. McCloskey, Clerk, and E. G. McMartin, Sheriff.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

It is ordered that each and every objection to testimony offered and each and every motion to strike out testimony admitted, be, and the same are hereby overruled; and

It is further ordered that findings and judgment be prepared for plaintiff in accordance with a written opinion this day filed.

166 PLAINTIFF'S EXHIBIT No. 1.

Placer Mining Location Notice.

Friday, Feb. 5th, 1910.

Notice is hereby given that the undersigned locators each being of lawful age and citizens of the United States, in compliance with the requirements and by authority of the laws of the United States, and of the State of California, have this day located the following described land of the United States, as mining ground, and will claim, hold, work and perfect title thereto as a placer mining claim, to-wit:

Beginning at the southwest corner of the "Sycamore" placer mining claim; thence North 5280 feet to a monument of stone on the south line of the "Revelation" placer mining claim; thence west along the south line of the said "Revelation" placer mining claim 1320 feet to a monument of stone located at the southwest corner of the said "Revelation" placer mining claim; thence south 5280 feet to a monument of stone located on the north line of the "Baltimore" placer mining claim; thence east along the north line of said "Baltimore" placer mining claim 1320 feet to the place of beginning, in the Little Sespe Petroleum Mining District, County of Ventura, State of California, containing 160 acres of land.

167 This claim is bounded on the east by the Syracuse placer mining claim, on the north by the Revelation placer mining claim, on the west by the Shenandoah and Sampson placer mining claims, and on the south by the Baltimore placer mining claim.

This claim shall be known as the "Schley" placer mining claim.

Discovered, located and this notice posted this — day of February, 1910.

S. R. SMITH.
E. R. SMITH.
H. L. EMERSON.
F. P. HENRY.
G. FRENCH.
OSCAR BEYRLE.
R. A. STEEL.
M. McMILLEN.
Locators.

(Endorsed:) Filed Jan. 3, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

PLAINTIFF'S EXHIBIT No. 2.

This indenture made the 8th day of March, 1910, between B. R. Smith, (erroneously named in the location notice hereinafter mentioned, E. R. Smith), H. L. Emerson, F. P. Henry, G. French, Oscar Beyrle, R. A. Steele, also known as R. A. Steel, M. Mc-
168 Millen, the parties of the first part, and S. R. Smith, the party of the second part, witnesseth:

That the said parties of the first part for and in consideration of the sum of ten dollars, lawful money of the United States and other good and valuable considerations to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents sell, remise, release, and forever quit-claim unto the said party of the second part and to his heirs and assigns, the following described placer mining claim situate in the Little Sespe Petroleum Mining District, County of Ventura, State of California, to-wit:

The "Schley" placer mining claim more particularly described as follows:

Beginning at the southwest corner of the "Syracuse" placer mining claim; thence north 5280 feet to a monument of stone on the south line of the "Revelation" placer mining claim; thence west along the south line of the said "Revelation" placer mining claim 1320 feet to a monument of stone, located at the southwest corner of the said "Revelation" placer mining claim; thence south 5280 feet to a monument of stone, located on the north line of the "Baltimore" placer mining claim, 1320 feet to the place of beginning.

Reference is hereby made to the notice of location of said "Schley" placer mining claim on file and of record in the office of the county recorder of said County of Ventura, in book 19 of Mining Claims, at page 255.

Together with all the rights, privileges and franchises
169 thereto incident, appendant and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the parties of the first part have hereunto set their hands the day and year in this indenture first above written.

B. R. SMITH.
H. L. EMERSON.
F. P. HENRY.
G. FRENCH.
OSCAR BEYRLE.
R. A. STEELE.
M. McMILLEN.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this third day of April in the year one thousand nine hundred and ten, A. D., before me, Simon Schulman, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared G. French, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

170 In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] SIMON SCHULMAN,
Notary Public in and for Los Angeles County, State of California.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 14th day of March in the year of our Lord one thousand nine hundred and ten, before me, Jennie Shutt, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared H. L. Emerson, F. P. Henry and R. A. Steele, also known as R. A. Steel, known to me to be the persons whose names are subscribed to the within and annexed Instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this Certificate first above written.

[SEAL.] JENNIE SHUTT,
Notary Public in and for the County of Los Angeles, State of California.

171 STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 25th day of March, in the year of our Lord one thousand nine hundred and ten, before me, Jennie Shutt, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared B. R. Smith, known to me to be the person whose name is subscribed to the within and annexed instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, in said county, the day and year in this certificate first above written.

[SEAL.] JENNIE SHUTT,
Notary Public in and for the County of Los Angeles, State of California.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 17th day of March, in the year of our Lord one thousand nine hundred and ten, before me, Jennie Shutt, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Oscar Beyrle, known to me to be the person whose name is subscribed to the within and annexed instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and
172 affixed my official seal, in said county, the day and year in this certificate first above written.

[SEAL.] JENNIE SHUTT,
Notary Public in and for the County of Los Angeles, State of California.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 15th day of March in the year of our Lord one thousand nine hundred and ten, before me, Jennie Shutt, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared M. McMillen, known to me to be the person whose name is subscribed to the within and annexed instrument, and acknowledged to me that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, in said county, the day and year in this Certificate first above written.

[SEAL.] JENNIE SHUTT,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) Filed Dec. 1, 1910. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

173 PLAINTIFF'S EXHIBIT No. 3.

Proof of Labor on "Schley" Placer Mining Claim.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Before me, the subscriber, personally appeared J. P. Brunton, who being duly sworn, says: That at least One Hundred Sixty ($160.00) dollars' worth of labor or improvements, consisting of the building of a wagon road from the main traveled road to Squaw Flat in a general north-easterly direction to the westerly line of said claim, and one-half of the cost of a wagon road crossing said claim at least 1,000 feet in length on said claim, were performed or made upon the "Schley" placer mining claim, situate in the Little Sespe Petroleum Mining District, County of Ventura, and State of California, during the year ending December 31st, 1910. Such expenditure was made by or at the expense of S. R. Smith, the owner of said claim, for the purpose of complying with the law and holding said claim.

Reference is hereby made for a full and more particular description of said "Schley" placer mining claim, to the notice of location thereof on file and of record in the office of the County Recorder of said County of Ventura, State of California, in Book 19 of Mining Claims, at page 255.

J. P. BRUNTON.

174. Subscribed and sworn to before me this 14th day of November, 1910.

[SEAL.] JENNIE SHUTT,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) Filed Dec. 1, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

PLAINTIFF'S EXHIBIT No. 4.

This memorandum of agreement made in duplicate this 5th day of October, 1910, between S. R. Smith, of the City of Los Angeles, County of Los Angeles, State of California, party of the first part, and O. J. Stowe, of the County of Ventura, in said state, party of the second part, witnesseth:

Whereas, the party of the first part has received from his co-locators a quit-claim deed to the "Schley" placer mining claim, situate in the Little Sespe Petroleum Mining District, County of Ventura, State of California, and more particularly described as follows, to-wit:

Beginning at the southwest corner of the "Syracuse" placer mining claim; thence north 5280 feet to a monument of stone on the south line of the "Revelation" placer mining claim; thence

175 west along the south line of the said "Revelation" placer mining claim 1320 feet to a monument of stone, located at the southwest corner of the said "Revelation" placer mining claim; thence south 5280 feet to a monument of stone, located on the north line of the "Baltimore" placer mining claim; thence east along the north line of said "Baltimore" placer mining claim, 1320 feet to the place of beginning.

Reference is hereby made to the notice of location of said "Schley" placer mining claim on file and of record in the office of the County Recorder of said County of Ventura, in Book 19 of Mining Claims, at page 255.

And whereas, the party of the second part is desirous of securing from the party of the first part a quit claim deed to said "Schley" placer mining claim.

Now therefore, in consideration of the covenants and agreements hereinafter contained on the part of the said party of the second part, the party of the first part agrees to convey to said party of the second part by quit-claim deed, all of his right, title and interest in and to said "Schley" placer mining claim, upon compliance by the said party of the second part with the covenants and agreements upon his part to be kept and performed.

The said party of the second part agrees that he will cause to be organized a corporation under the laws of the State of California to be known as Stowe Light Oil Company, with an authorized capital stock of five hundred thousand (500,000) dollars, divided into five hundred thousand (500,000) shares of the par value of one dollar per share; that he will cause to be issued to the party
176 of the first part, or to his order, seventy-five thousand (75,000) shares of the fully paid capital stock of said corporation; that there shall be placed in the treasury of said corporation one hundred thousand (100,000) shares, which shall not be sold or otherwise disposed of until after a well producing oil in paying quantities shall have been drilled, completed and paid for upon said "Schley" claim. The said party of the second part further agrees that he or said Stowe Light Oil Company shall go into immediate possession and occupancy of said "Schley" placer mining claim, and with all due diligence shall proceed with the drilling of a well to a depth of two thousand (2,000) feet, or to such less depth as it may be necessary to find oil in paying quantities. Paying quantities is understood to mean a well which shall produce not less than fifteen (15) barrels of oil per day after thirty days' continuous pumping.

The party of the first part agrees that simultaneously with the execution of this agreement he will execute to the party of the second part a quit-claim deed to said "Schley" placer mining claim, and place the same in escrow with the Merchants National Bank of Los Angeles, with instructions to deliver the same to said party of the second part upon said party of the second part furnishing satisfactory proof of the depth and capacity of said well, and proof that all bills for labor and material furnished or used in connection with said well, have been paid.

It is further provided that in the event the party of the
177 second part shall not find oil in paying quantities in the first well attempted to be drilled by him, or shall for any reason be unable to reach the depth of two thousand (2,000) feet, he shall have the right to proceed with the drilling of other wells upon said property, and in the event that oil shall not be found in paying quantities upon said property or the party of the second part shall be unable to reach the depth of two thousand (2,000) feet in any well, the party of the first part expressly agrees that he shall have no cause of action for damages against said party of the second part, and hereby expressly waives any right of action for damages, by reason of the failure of said party of the second part to comply with the terms of this agreement, it being understood and agreed between the parties hereto that in the event of the abandonment of said property, he shall give due notice thereof to the party of the first part, and all of his obligations under this agreement shall thereby cease and determine.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

S. R. SMITH.
O. J. STOWE.

(Endorsed:) Filed Jan. 4, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

178 PLAINTIFF'S EXHIBIT No. 5.

April 7, 1910.

Mr. L. H. Mitchell, 407 Douglas Building, City.

MY DEAR SIR: I hand you herewith deed from B. R. Smith and others to S. R. Smith, dated March 8, 1910, and deed from S. R. Smith to the Union Oil Company, dated April 7, 1910, for the "Schley" placer mining claim, being the same property known to you as the "Rawley."

These deeds are to be held by you and delivered to the Union Oil Company only upon delivery to S. R. Smith, of a certificate of stock for 75,000 shares of the par value of one dollar per share in a corporation to be organized with an authorized capital of one million dollars, 500,000 shares to be placed in the treasury; said corporation to have a twenty-year lease upon the property known as the "Rawley" and "Saladin" placer mining claims in the Little Sespe Petroleum Mining District, Ventura County, California, said lease to be upon an eighth royalty from the Union Oil Company of California.

Mr. Smith understands that you are to be an owner of stock in this corporation to the extent of 125,000 shares; that said corporation
179 shall be organized under the laws of the State of California and the stock of said corporation shall be issued as fully paid and non-assessable. He also understands that upon the delivery of said certificate of stock for 75,000 shares to him he will become party to a pooling agreement by which all of the stock of said

corporation, except 500,000 shares to be placed in the treasury and sold for development purposes, shall be pooled for a period of one year, and that upon the delivery of the certificate of stock to a bank or trust company to hold for said period, a pooling certificate shall be issued to S. R. Smith calling for the delivery to him of said certificate of stock in one year.

I am delivering these deeds to you in accordance with our conversations of recent date, by way of settlement and compromise of a controversy in regard to the title over the placer mining claim known as the "Rawley" and also as the "Schley," and it is expressly understood that unless you can carry out these instructions within ten days from date hereof, the deeds are to be returned to me.

I am placing the matter in this condition so that you may readily handle it, and do so with full confidence that you will carry out not only the letter, but the spirit of our mutual agreement.

Yours very truly,

ALTON M. CATES.

2 inclosures.

LOS ANGELES, CAL., April 7, 1910.

Received from Alton M. Cates:

1. Deed B. R. Smith, et al. to S. R. Smith, dated March 8th, 1910.

180 2. Deed S. R. Smith to Union Oil Company, dated April 7, 1910, both of said deeds being quit-claim deeds to the "Schley" placer mining claim situate in the Little Sespe Petroleum Mining District, Ventura County, California; which said deeds are to be held by me and only delivered upon compliance with the terms of a certain letter of instruction of even date herewith addressed to me by said Cates. In the event that said instructions are not complied with within ten days from date hereof, I agree to return said deeds to said Cates.

—— ——.

PLAINTIFF'S EXHIBIT NO. 6.

August 15th, 1910.

Mr. L. H. Mitchell, 408 Douglas Building, Los Angeles, Cal.

DEAR SIR: On behalf of my client, Mr. S. R. Smith, I hereby demand from you the delivery to me of those two certain deeds heretofore and on the 7th day of April, 1910, delivered to you to hold in escrow, and for which said deeds I hold your receipt which I now tender you.

Said deeds are:

181 Deed, B. R. Smith et al. to S. R. Smith, dated March 8th, 1910.

Deed, S. R. Smith to Union Oil Company of California, dated April 7th, 1910.

Both of said deeds are Quit Claim deeds to the "Schley" Placer

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Mining Claim, situate in the Little Sespe Petroleum Mining District, Ventura County, California.

Unless these deeds are delivered to me immediately upon this demand I shall institute proceedings on behalf of Mr. S. R. Smith against you to compel delivery of said deeds.

Yours very truly,

ALTON M. CATES.

DEFENDANT'S EXHIBIT "A."

This lease and agreement, made and entered into this 6th day of November, 1909, by and between the Union Oil Company of California, a corporation organized and existing under and by virtue of the laws of California, having its principal place of business at Oleum, Contra Costa County, California, party of the first
182 part, and L. H. Mitchell and T. A. Slocum, of the City of Los Angeles, state aforesaid, parties of the second part.

Witnesseth: That for and in consideration of One Dollar in hand paid by the parties of the second part to the party of the first part, receipt of which is hereby acknowledged and for and in consideration of the rents and royalties hereinafter set forth to be paid by the parties of the second part to the party of the first part, and for and in consideration of the covenants to be kept and the acts to be performed, the said party of the first part hereby lets and leases to the said parties of the second part, for uses and purposes hereinafter set forth and for no other purposes, that certain piece or parcel of land subject and subordinate to its rights therein, situated in the County of Ventura, State of California, and more particularly described as follows, to-wit:

That certain tract of land situated in the Little Sespe Petroleum Mining District sometimes known as and called "Rawley," the same being shown and delineated upon that certain map entitled "Little Sespe Petroleum Mining District," compiled by R. W. Fenn in 1897, and on file in the office of the Union Oil Company of California at Los Angeles, California, said claim beginning at the northeasterly corner of the Britton Oil Claim and running thence north eighty (80) chains to a point; thence east twenty (20) chains to a point; thence south eighty (80) chains to the north line of the Fifty-nine Oil Claim, thence westerly along the north line of the Fifty-nine Oil Claim twenty (20) chains to the point of beginning, and con-
183 taining one hundred and sixty (160) acres. The tract of land being so located that if the Government surveys were extended across the same, it would lie wholly within Section Seventeen (17), Township Five (5) North, Range Nineteen (19) West S. B. M., also that certain piece or parcel of land delineated upon the aforesaid map and known as and commonly called "Saladin" or "Shenendoah," beginning at a stone marked "R" set in the center of the aforesaid claim called "Rawley," and running thence north forty (40) chains; thence west forty (40) chains to a point; thence south forty (40) chains to the northwest corner of the "Sunflower"

claim; thence east forty (40) chains to the point of beginning and containing one hundred and sixty (160) acres, more or less.

To have and to hold the same during the full term of twenty (20) years from and after the date hereof, that is to say beginning on the 6th day of November, 1909, and ending at noon on the 6th day of November, 1929, unless sooner terminated as hereinafter provided, for the purpose of drilling or boring for petroleum oil, natural gas and other hydrocarbons of whatsoever kind or character, together with the right to erect and remove derricks, telephone and telegraph poles, houses, and to install and remove pipe lines and machinery, and to do all things customary, necessary or essential in drilling for, producing and marketing oil and other substances produced on the hereinbefore described lands, and the said parties of the second part shall commence the actual operations of drilling for oil, gas
184 or other hydrocarbons upon the hereinbefore described land on or before the first day of February, 1910, and the said operations shall be carried on continuously and in good faith, unavoidable accidents, delays by the elements, Sundays and legal holidays excepted, until one (1) well shall have been drilled to a depth of one thousand and five hundred (1500) feet, or until a "Paying well" is completed at a lesser depth, which well shall constitute all the drilling requirements for the year 1910, and each and every year thereafter during the entire life of this lease at least two (2) "paying wells" shall be drilled to a depth of 1500 feet, unless a paying well is developed at a lesser depth. It is understood and agreed that No. 2 well shall be located on the undeveloped parcel of the aforesaid land. All wells drilled in excess of two (2) wells per year, shall be credited to the next year, or succeeding years, as the case may be.

For the purpose of this contract, a "paying well" shall be construed to mean a well which shall produce at least fifteen (15) barrels of forty-two (42) gallons each, of merchantable oil per diem after thirty (30) days' continuous pumping.

It is further understood and agreed that the aforesaid wells represent the minimum amount of drilling required to be done hereunder by the parties of the second part, and does not in any way limit the said parties of the second part from doing more work or completing more wells than herein specifically set forth, there being no maximum limit to the number of wells which may be drilled hereunder during the term of twenty (20) years, but the right of
185 the parties of the second part to drill wells on said land shall cease and terminate absolutely on the 6th day of November, 1929, at twelve o'clock, noon.

It is further understood and agreed that the right to drill additional wells hereunder shall be forfeited at an earlier date upon the failure of the parties of the second part to perform any of the covenants or conditions herein set forth, but should the parties of the second part perform all the acts and covenants contained herein in good faith until the full expiration of the right to drill, viz., on the 6th day of November, 1929, the said parties of the second part shall be entitled to retain all the wells drilled hereunder so long as said wells produce oil in

commercial quantities, but should the said parties of the second part, for any reason whatsoever, forfeit *its* right to drill wells, as herein provided, the said parties of the second part may keep such wells as have been drilled hereunder up to the time of forfeiture, only so long as they produce oil in commercial quantities but in no event longer than the 6th day of November, 1929. In the event that the said parties of the second part shall forfeit this lease and agreement for any reason whatsoever, the said party of the first part shall have the right to re-enter said premises at its will, and said parties of the second part shall peaceably surrender all of said premises, except the portion which is necessary, or essential for the operation of the wells still retained by them, and thereupon the said party of the first part may proceed to drill wells for water, oil, or other hydro-carbons, or to make any other use what-
186 soever of the said lands, but said party of the first part shall not locate or drill any well or wells within Three Hundred (300) feet of any producing well being operated by the parties of the second part.

It is further understood and agreed that the said parties of the second part shall operate all the wells drilled hereunder to their full capacity (excepting as immediately hereinafter provided) and shall keep the same in good repair, shut off all water, plug abandoned wells, and operate the producing wells in accordance with the best usages in vogue in that general locality, provided, however, and it is hereby mutually understood and agreed by the parties hereto, that the said party of the first part may by giving written notice to the parties of the second part, require of the parties of the second part, that they shall cease to produce oil under the provisions of this lease during any or all periods of depression when oil of similar or like quality to that produced hereunder will not sell for forty (40) cents per barrel at the wells in the Tar Creek District, and it is further understood and agreed that during said periods of depression when oil at the wells will not bring forty (40) cents per barrel as aforesaid, it shall be optional with the said parties of the second part whether they shall drill additional wells or not, the terms and conditions of this agreement and lease hereinbefore set forth to the contrary notwithstanding.

The said parties of the second part covenants and agrees to pay and deliver to said party of the first part, in tanks or other recep-
tacles to be furnished at the sole cost, charge and expense of
187 the said parties of the second part, situated on the property herein leased, as rent or royalty therefor, a full and equal one-eighth (1/8) part of the total oil, or other product, produced on said property after deducting therefrom the amount of oil or gas necessary or essential in carrying on the work of drilling for and producing the same. The said rent or royalty oil shall be delivered to the party of the first part in kind and delivery of the same shall be made from time to time as occasion may demand, but in no event later than the fifth day of each and every month, for the oil produced under this lease and agreement during the preceding calendar month.

The aforesaid tanks and receptacles shall be strapped and measured by competent persons, and gauge tables in duplicate shall be made which will show the capacity thereof, and the expense of strapping said tanks and making said gauge tables shall be borne equally by the parties hereto.

The parties hereto shall on or before the fifteenth of each and every month make an accounting of and settlement for the royalty oil or other substances produced under this lease and agreement, from the said lands during the preceding calendar month.

Said parties of the second part hereby agree that they will well and truly do all the assessment work hereafter required by law to be done on the hereinbefore described oil claims, at their own cost and expense, and will make the necessary affidavits of labor performed and the same shall be in the name of, and on, and in behalf of the said party of the first part,—said Union Oil Com-
188 pany of California,—and in addition thereto said parties of the second part shall in like manner perform the requisite labor and make the affidavits for the year 1909 on the adjoining oil claim, known as and commonly called "Baltimore."

It is hereby understood and agreed that all taxes on lands herein set forth, or on improvements made hereunder, or on any land values created by reason of the development hereunder, shall be assessed to and paid by the parties of the second part, and any refusal or neglect on the part of the parties of the second part to do so, shall operate as a forfeiture of all their rights hereunder.

It is understood and agreed that the said parties of the second part shall keep a true and correct log of each and every well drilled by it hereunder, they shall at least once each month give the party of the first part tour reports, showing correctly the log of each of said wells, the date of the beginning and the completion of each and every well, the details of formation, the size, length and description of each string of casing set into or pulled out of each of said wells, and the condition, length, size and description of each string of casing left in each of said wells when completed, and also such other data as is customary or essential to make said log complete in every detail. Said party of the first part will, upon request, furnish printed blanks for daily reports and for permanent logs.

The said parties of the second part hereby grant to the said party of the first part the refusal *or* the right to purchase all of the
189 seven-eighths (⅞) of the oil produced on the hereinbefore described lands, provided, said party of the first part pay them therefor as high a price as any other bona fide intending purchaser will offer for it.

The said parties of the second part covenants and agrees to keep the party of the first part and the property of the party of the first part herein described, free and harmless from all liens or claims, or pretended liens or claims, which may arise by reason of any material furnished or labor performed by or at the instance of the said parties of the second part. And said parties of the second part covenant and agree before commencing work upon said property, to post and maintain notices thereon in conspicuous places at every point where

work is being carried on, which notices shall be in the name of the party of the first part and substantially in the form required by the lien laws of the State of California, and shall recite over the name of the party of the first part, that the said party of the first part will not be liable, or allow its property to be held liable for any debts incurred, material furnished, or labor done by or at the instance of the parties of the second part, and should the parties of the second part commence, or carry on any work, or supply any material or cause or permit the same to be done without first posting said notices, as above set forth, or after having posted should the parties of the second part fail to maintain said notices for any reason, then in that event the agreement may be terminated immediately, or at any time thereafter by the party of the first part at its option.

Should the parties of the second part fail or neglect to pay
190 said rent or royalty at the time and in the manner specified or should they fail to carry out or perform any of the covenants, conditions or agreements herein contained to be performed by them, then in that event the said party of the first part may reenter said premises and retake possession of the same, except that part necessary and essential to operate wells to be retained by said parties of the second part, as hereinbefore provided, and said parties of the second part shall peaceably surrender and deliver said premises to the party of the first part, its agents or assigns.

It is further understood and agreed by and between the parties hereto that the said parties of the second part shall keep true and accurate books of account, showing in detail the daily production of each and every well drilled hereunder, and the total production by months, said accounts shall be open to and for the inspection of the said party of the first part at any time during the regular office hours of the parties of the second part.

The said parties of the second part hereby agree that immediately upon the discovery of oil in paying quantities on either or both parcels of the above described lands, they will so notify the said party of the first part of that fact, and thereupon said party of the first part shall proceed to perfect title to said land and carry the same to final completion at its sole cost and expense.

This contract shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

In Witness Whereof the party of the first part has here-
191 unto, and unto a duplicate hereof, caused its corporate name and seal to be affixed by its President and by its Secretary thereunto duly authorized, and the said parties of the second part have hereunto, and unto a duplicate hereof, set their hands and seals this 23d day of November, 1909.

UNION OIL COMPANY OF CALIFORNIA,
By W. L. STEWART, *Vice President*,
[SEAL.] By GILES KELLOGG, *Secretary*.
By L. H. MITCHEL. [SEAL.]
By T. A. SLOCUM. [SEAL.]

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 23d day of November, in the year of our Lord One Thousand Nine Hundred Nine, before me, E. S. Dessau, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared W. L. Stewart, known to me to be the Vice President, and Giles Kellogg, known to me to be the Secretary of the Union Oil Company of California, the Corporation that executed the within instrument, and acknowledged to me that such Corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[SEAL.] E. S. DESSAU,
Notary Public in and for the County of Los Angeles, State of California.

192 STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 23d day of November, in the year Nineteen Hundred and nine, before me, E. S. Dessau, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared T. A. Slocum and L. H. Mitchel, known to me to be th persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[SEAL.] E. S. DESSAU,
Notary Public in and for the County of Los Angeles, State of California.

Agreement.

This indenture, made and entered into, this twenty-fifth day of March, 1910, by and between Thos. A. Slocum, of the city of Los Angeles, State of California, party of the first part, and L. H. Mitchel, of the same city and state, party of the second part.

Witnesseth: That for and in consideration of the sum of Ten Dollars ($10) lawful money of the United States, to him in hand paid the receipt of which is hereby acknowledged, the party of the first part sets over, sells, transfers, and assigns unto the party of the second part, all his right, title and interest to the within instrument, to-wit:

193 A certain lease or indenture from the Union Oil Company of California to L. H. Mitchel and Thos. A. Slocum, granting a twenty-year lease at 1/8 royalty on the Mineral Claims known as the Rawley and Saladin, situated in the Little Sespe Petroleum Mining District, in the county of Ventura, State of California.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

THOS. A. SLOCUM.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this twenty-fifth day of March, in the year of our Lord one thousand nine hundred and ten, before me, G. L. Whithan, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Thos. A. Slocum, known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me personally that he executed the same.

In witness whereof, I have hereunto set my hand and seal, at my office in said County, the day and year in this Certificate first above written.

[SEAL.] G. L. WHITHAN,
Notary Public in and for the County of Los Angeles, State of California.

194 (Endorsed:) Filed Jan. —, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

Affidavit as to Assessment Work in the Year 1906.

Gird and Udall Group of Oil Claims.

STATE OF CALIFORNIA,
County of Ventura, ss:

W. W. Orcutt, being duly sworn, deposes and says that he is the manager of the Geological Department of the Union Oil Company of California;

That the Union Oil Company of California is the owner of all of the placer oil claims hereinafter named, by virtue of the conveyances from the successors in interest of the original locators of said claim, or by reason of said corporation having a beneficial interest *on* said claims, the first twenty-nine (29) claims being those embraced in and covered by the application for patent for the mining ground platted and known as the "Consolidated Petroleum Mine," to-wit:

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Almo Oil Claim,
Arctic Oil Claim,
Carpenter Oil Claim,
Connection Oil Claim,
Four Forks Oil Claim,
Gorman Oil Claim,
Hogs Back Oil Claim,
Hogs Head Oil Claim,
Kenyon Oil Claim,
Maple Creek Oil Claim,
Merrill Oil Claim,
Mexico Oil Claim,
Minnehaha No. 2 Oil Claim,
N. E. 36 Oil Claim,
N. W. 36 Oil Claim,
Bonito Oil Claim,
Bunker Hill Oil Claim,
Catchum Oil Claim,
Dryden Oil Claim,
Ekbatan Oil Claim,
Junction No. 2 Oil Claim,
Lexington Oil Claim,
Live Oak Oil Claim,
Newport Oil Claim,
Newport Extension Oil Claim,
Rawley Oil Claim,

Harrington Oil Claim,
Havana Oil Claim,
Stewart Oil Claim,
Manila Oil Claim,
Protection Oil Claim,
Old Four Forks Oil Claim,
S. E. 36 Oil Claim,
Side Hill Oil Claim,
Silver Oil Claim,
Shady Rock Oil Claim,
Spring Valley Extension Oil Claim,
S. W. 36 Oil Claim,
St. George Oil Claim,
Ventura Oil Claim,
Texas Oil Claim,
Udall Oil Claim,
Washington Oil Claim,
Wild Cat Oil Claim,
Sunset Oil Claim,
Sunrise Oil Claim,
Vermont Oil Claim,
Irwin Oil Claim,
Almirante Oil Claim,
Century & Caloric Oil Claim,
Nogales Oil Claim,
Pioneer Oil Claim,
Li Chang Oil Claim,
Shenendoah Oil Claim,
Sampson Oil Claim,
Santa Fe Oil Claim,
Elizabeth Oil Claim,
Baltimore Oil Claim,

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That said Union Oil Company of California, between January 1st and December 31st, 1906, caused labor to be performed and improvements to be made, requisite for the location and ownership of mining claims, in, upon or for the benefit of, and in performance of the requisite annual assessment work for the aforesaid mining claims; that the expenditures so made for labor and improvements for the claims aforesaid in said year of 1906, aggregated at least Four Thousand Seven Hundred Twenty-eight Dollars Seventy-one cents ($4728.71); that the expenditures as aforesaid consisted of the pumping and operating of oil wells, the making and repairing of roads and trails, and the laying and connecting up of water lines and oil lines, the erection of tanks and other structures, and the labor of men and teams in carrying on said work on and for the benefit of the claims aforesaid.

W. W. ORCUTT,
Mgr. Geological Department of Union Oil Company of California.

Subscribed and sworn to before me this 31st day of December, 1906.

[SEAL.]

E. S. DESSAU,
Notary Public in and for the County of Los Angeles, State of California.

Recorded at the request of W. W. Orcutt Jan. 2, A. D. 1907, at 10 min. past 9 o'clock A. M., in Book 17 of Min. Claims, page 160, Records of Ventura Co., Cal.

J. L. ARGABRITE,
County Recorder.

197 *Affidavit as to Assessment Work in the Year* 1907.

Gird and Udall Group of Oil Claims.

STATE OF CALIFORNIA,
County of Ventura, ss:

F. F. Hill, being duly sworn, deposes and says: That he is the Field Superintendent of the Union Oil Company of California; that the Union Oil Company of California is the owner of all of the placer oil claims hereinafter named, by virtue of the conveyances from the successors in interest of the original locators of said claim, or by reason of said corporation having a beneficial interest *on* said claims, the first Twenty-nine (29) claims being those embraced in and covered by the application for patent for the mining ground platted and known as the "Consolidated Petroleum Mine," situated in the County of Ventura, State of California, to-wit:

Almo Oil Claim,
Arctic Oil Claim,
Carpenter Oil Claim,
Connection Oil Claim,
Four Forks Oil Claim,
Gorman Oil Claim,
198 Hogs Back Oil Claim,
Hogs Head Oil Claim,
Kenyon Oil Claim,
Maple Creek Oil Claim,
Merrill Oil Claim,
Mexico Oil Claim,
Minnehaha No. 2 Oil Claim,
N. E. 36 Oil Claim,
N. W. 36 Oil Claim,
Bonito Oil Claim,
Bunker Hill Oil Claim,
Catchum Oil Claim,
Dryden Oil Claim,
Ekbatan Oil Claim,
Junction No. 2 Oil Claim,
Lexington Oil Claim,
Live Oak Oil Claim,
Newport Oil Claim,
Newport Extension Oil Claim,
Rawley Oil Claim,
Harrington Oil Claim,
Manila Oil Claim,
Havana Oil Claim,
Stewart Oil Claim,
Protection Oil Claim,
Old Four Forks Oil Claim,
S. E. 36 Oil Claim,
Side Hill Oil Claim,
Silver Oil Claim,
Shady Rock Oil Claim,
Spring Valley Extension Oil Claim,
S. W. 36 Oil Claim,
St. George Oil Claim,
Ventura Oil Claim,
Texas Oil Claim,
Udall Oil Claim,
Washington Oil Claim,
Wild Cat Oil Claim,
Sunset Oil Claim,
Sunrise Oil Claim,
Vermont Oil Claim,
Irwin Oil Claim,
Almirante Oil Claim,
Century & Caloric Oil Claim,
Li Chang Oil Claim,
Nogales Oil Claim,
Pioneer Oil Claim,
Shenendoah Oil Claim,
Sampson Oil Claim,
Santa Fe Oil Claim,
Elizabeth Oil Claim,
Baltimore Oil Claim,

That said Union Oil Company of California, between January 1st and December 31st, 1907, caused labor to be performed and improvements to be made, requisite for the location and owner-
199 ship of mining claims, in, upon or for the benefit of, and in performance of the requisite annual assessment work for the aforesaid mining claims; that the expenditures so made for labor and improvements for the claims aforesaid in said year of 1907, aggregated at least Six Thousand Seven Hundred and Fifty Dollars and Thirty-seven cents ($6,750.37); that the expenditures as aforesaid consisted of the pumping and operating of oil wells, the making and repairing of roads and trails, and the laying and connecting up of water lines and oil lines, the erection of tanks and other structures, and the labor of men and teams in carrying on said work on and for the benefit of the claims aforesaid.

F. F. HILL,
Field Superintendent of the Union Oil Company of California.

Subscribed and sworn to before me this 27th day of December, 1907.

[SEAL.]

E. S. DESSAU,
Notary Public in and for the County of Los Angeles, State of California.

Recorded at the request of Union Oil Co., Jan. 21, 1908, at 30 min. past 9 o'clock A. M., in Book 18 of Min. Claims, page 69, Records of Ventura Co., Cal.

J. L. ARGABRITE,
County Recorder,
By JOS. M. ARGABRITE,
Deputy Recorder.

200 *Affidavit as to Assessment Work in the Year* 1909.

Gird and Udall Group of Oil Claims.

STATE OF CALIFORNIA,
County of Ventura, ss:

F. F. Hill, being duly sworn, deposes and says: That he is the Field Superintendent of the Union Oil Company of California; that the Union Oil Company of California is the owner of all of the placer oil claims hereinafter named, by virtue of the conveyances from the successors in interest of the original locators of said claim, or by reason of said corporation having a beneficial interest *on* said claims, the first Twenty-nine (29) claims being those embraced in and covered by the application for patent for the mining ground platted and known as the "Consolidated Petroleum Mine," situated in the County of Ventura, State of California, to-wit:

Almo Oil Claim,
Arctic Oil Claim,
Carpenter Oil Claim,
Connection Oil Claim,
Four Forks Oil Claim,
Gorman Oil Claim,
201 Hogs Back Oil Claim,
Hogs Head Oil Claim,
Kenyon Oil Claim,
Maple Creek Oil Claim,
Merrill Oil Claim,
Mexico Oil Claim,
Minnehaha No. 2 Oil Claim,
N. E. 36 Oil Claim,
N. W. 36 Oil Claim,
Bonito Oil Claim,
Bunker Hill Oil Claim,
Catchum Oil Claim,
Dryden Oil Claim,
Ekbatan Oil Claim,
Junction No. 2 Oil Claim,
Lexington Oil Claim,
Live Oak Oil Claim,
Newport Oil Claim,
Newport Extension Oil Claim,
Rawley Oil Claim,
Harrington Oil Claim,
Manila Oil Claim,
Havana Oil Claim,
Stewart Oil Claim,
Protection Oil Claim,
Old Four Forks Oil Claim,
S. E. 36 Oil Claim,
Side Hill Oil Claim,
Silver Oil Claim,
Shady Rock Oil Claim,
Spring Valley Extension Oil Claim,
S. W. 36 Oil Claim,
St. George Oil Claim,
Ventura Oil Claim,
Texas Oil Claim,
Udall Oil Claim,
Washington Oil Claim,
Wild Cat Oil Claim,
Sunset Oil Claim,
Sunrise Oil Claim,
Vermont Oil Claim,
Irwin Oil Claim,
Almirante Oil Claim,
Century & Caloric Oil Claim,
Li Chang Oil Claim,
Nogales Oil Claim,
Pioneer Oil Claim,
Shenendoah Oil Claim,
Sampson Oil Claim,
Santa Fe Oil Claim,
Elizabeth Oil Claim,
Baltimore Oil Claim.

That said Union Oil Company of California caused labor to be performed and improvements to be made, through its agents
202 and lessees, for the year 1909, requisite for the location and ownership of, in, upon or for the benefit of, and in performance of the requisite annual assessment work for the aforesaid mining claims; that the expenditures so made for labor and improvements for the claims aforesaid in said year of 1909, aggregated at least Twenty-five Thousand Dollars ($25,000.00); that the expenditures aforesaid consisted of the pumping and operating of oil wells, the making and repairing of roads and trails, and the laying and connecting up of water lines and oil lines, the erection of tanks and other structures, and the labor of men and teams in carrying on said work on and for the benefit of the claims aforesaid.

F. F. HILL,
Field Superintendent of the Union Oil Company of California.

Subscribed and sworn to before me this 14th day of January, 1910.
[SEAL.] E. S. DESSAU,
Notary Public in and for the County of Los Angeles, State of California.

Recorded at the request of W. W. Orcutt, Jan. 15, 1910, at 10 min. past 9 o'clock A. M., in Book 19 of Min. Claims, page 69, Records of Ventura Co., Cal. J. L. ARGABRITE,
County Recorder.

STATE OF CALIFORNIA,
County of Ventura, ss:

I, J. L. Argabrite, County Recorder in and for said County, hereby certify that the annexed are full, true and correct copies of
203 Original Affidavits of Assessment Work recorded in my office.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 1st day of February, A. D. 1911
[SEAL.] J. L. ARGABRITE,
County Recorder,
By J. M. ARGABRITE,
Deputy Recorder.

Proof of Labor.

STATE OF CALIFORNIA,
County of Ventura, ss:

Before me the subscriber personally appeared Thos. A. Slocum, who being duly sworn says that at least $300.00 worth of labor or improvements were performed or made upon Baltimore, Rawley and Shenendoah Claims. All of these oil placer claims being situated in the Little Sespe Petroleum Mining District, County of Ventura, State of California, during the year ending December 31st, 1909. Such expenditures were made by the subscriber Thos. A. Slocum. They were made for the benefit of the Union Oil Company, a corporation existing for and under the laws of the State of California.

That the labor performed and improvements made were as follows, building road and grade.

That the value of labor was at least $150.

204 That the value of improvements was at least $150.

THOS. A. SLOCUM.

Subscribed and sworn to before me this 31st day of December, A. D. 1909.
[SEAL.] I. L. WHITHAN,
Notary Public in and for Los Angeles, County, Cal.

Recorded at the request of T. A. Slocum Jan. 3, 1910, at 35 min. past 8 o'clock A. M., in Book 19 of Min. Claims, Page 32, Records of Ventura Co., Cal. J. L. ARGABRITE,
County Recorder,
By JOS. M. ARGABRITE,
Deputy Recorder.

(Title of Court and Cause.)

Notice of Intention to Move for a New Trial.

To S. R. Smith, plaintiff, and Alton M. Cates, Esq., Attorney for plaintiff in the above entitled action:—

Take notice that Union Oil Company of California, a corporation, the defendant in the above entitled action, intends to move the Court to vacate and set aside the decision of the Court in the above cause and to grant the defendant a new trial of said cause upon the following grounds, to-wit:

I.

Newly discovered evidence, material to the defendant, which it could not, with reasonable diligence, have discovered and produced at the trial.

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II.

Insufficiency of the evidence to justify said decision.

III.

That said decision is against the evidence.

IV.

That said decision is against law.

V.

Errors in law occurring at the trial and excepted to by the defendant.

Said motion will be made upon affidavits hereafter to be filed and served upon you; also upon a bill of exceptions hereafter to be prepared, served and filed; also upon a statement of the case hereafter to be prepared and filed.

(Signed) DON G. BOWKER,
ARTHUR H. BLANCHARD,
THOS. O. TOLAND,
Attorneys for Defendant.

Personal service of the foregoing Notice of Intention to Move for New Trial is hereby admitted this March 9th, 1911.

ALTON M. CATES,
Attorney for Plaintiff.

Thereafter the time for preparing and serving defendant's proposed Statement on motion for new trial was duly extended by Stipulation of the parties and by order of the Court in the above entitled action up to and including the 7th day of August, 1911.

206 *Specifications of Errors of Law.*

The defendant here specifies the particular errors of law occurring at the trial and excepted to by defendant, on which it relies for a new trial.

I.

The court erred in sustaining the objection of plaintiff to that certain question asked Witness Brunton: "How is it that you are not one of the locators, Mr. Brunton?" to which ruling of the Court the defendant excepted.

II.

The Court erred in granting the motion of plaintiff to strike out that certain question asked of Witness O. J. Stowe and his answer thereto, to-wit: "Q. You knew at the time or before you purchased the lumber that it was lumber of Reynolds and Mann?" "A. Well, I understood it was," to which ruling of the Court the defendant excepted.

III.

The Court erred in sustaining the objection of plaintiff to that certain question asked Witness O. J. Stowe "Did you make any inquiry, Captain Stowe, before you purchased that, what the right of Mr. Hales was in reference to this lumber?" to which ruling of the Court the defendant excepted.

IV.

The Court erred in sustaining the objection of plaintiff to that certain question asked of Witness O. J. Stowe: "With whom
207 did you enter into or agree upon, the terms that *is* contained in this agreement, Captain?" to which ruling of the Court the defendant excepted.

V.

The Court erred in sustaining the objection of plaintiff to strike out that certain answer of Witness L. H. Mitchel: "When Reynolds went up there to go to work on the property he was driven off," to which ruling of the Court the defendant excepted.

VI.

The Court erred in sustaining the objection of plaintiff to strike out that certain answer of Witness L. H. Mitchel: "Because Mr. Brunton had been in the office of Reynolds and Mann and talked to them and told them he had been surveying the land and knew the corners quite well and did show us the corners after I came up," to which ruling of the Court the defendant excepted.

VII.

The Court erred in sustaining the objection of plaintiff to strike out that certain answer of Witness H. I. Reynolds: "I think he did, yes sir," to which ruling of the Court the defendant duly excepted.

VIII.

The Court erred in admitting in evidence the admissions of Brunton made by the witness Reynolds as will more fully appear by defendant's exception No. 8, which is hereby referred to to which ruling of the Court the defendant duly excepted.

IX.

The Court erred in sustaining the objection of plaintiff to that certain question asked of Witness Reynolds: "Did Mr. Brun-
208 ton at any of these times ever talk to you about your lumber on the Rawley Claim?" to which ruling of the Court the defendant duly excepted.

X.

The Court erred in sustaining the objection of plaintiff to that certain question asked of Witness H. I. Reynolds: "Did Mr. Brunton at any of the times when he called there at your office after along about the tenth day of April last year have any conversation with you in reference to the Rawley claim or about your lumber that was placed thereon?" to which ruling of the Court the defendant excepted.

XI.

The Court erred in sustaining the objection of plaintiff to that certain question asked of Witness J. P. Brunton: "Do you know that there were not?" to which ruling of the Court the defendant excepted.

XII.

The Court erred in sustaining the objection of plaintiff to that certain question asked of Witness J. P. Brunton: "You were interested in that before the road was built across Rawley or Schley?" to which ruling of the Court the defendant excepted.

XIII.

The Court erred in disallowing on its own motion the question asked of Witness J. P. Brunton: "Now do you know who furnished the money to Mr. Peck to buy that lumber?" to which ruling of the Court the defendant excepted.

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XIV.

The Court erred in overruling the objection of defendant to that certain question asked of Witness L. H. Mitchel: "What arrangement was that and when was it made?" to which ruling of the Court the defendant excepted.

XV.

The Court erred in overruling the objection of defendant to that certain question asked of Witness L. H. Mitchel: "What was that arrangement with Mr. Smith permitting you to so notify Reynolds and Mann?" to which ruling of the Court the defendant excepted.

XVI.

The Court erred in overruling the objection of defendant to the offer of plaintiff of a letter (Plaintiff's Exhibit Number 5) to be introduced in evidence, to which ruling of the Court the defendant excepted.

XVII.

The Court erred in overruling the objection of defendant to the offer of plaintiff of a letter dated August 15, 1910, (Plaintiff's Exhibit No. 6) to be introduced in evidence, to which ruling of the Court the defendant excepted.

XVIII.

The Court erred in overruling the objection of defendant to that certain question asked of Witness John Irwin: "The fact that oil might be discovered in its present location on the Sampson claim would not necessarily show the oil-bearing character of the Rawley, would it?" to which ruling of the Court the defendant duly excepted.

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XIX.

The Court erred in overruling the objection of defendant to that certain question asked of Witness John Irwin: "Well, it might be possible from your experience, might it not, Mr. Irwin, from your experience in that territory, that if you went over onto the Rawley there might be such a fault in the formation as not to get a producing well on the Rawley?" to which ruling of the Court the defendant excepted.

XX.

The Court erred in sustaining the objection of plaintiff to that certain question asked of Witness B. B. Grinnell: "Has there been work done up there?" to which ruling of the Court the defendant excepted.

XXI.

The Court erred in granting the motion of plaintiff to strike out all of the testimony of Witness B. B. Grinnell, in regard to the purchase and sale of the Syracuse, to which ruling of the Court the defendant excepted.

XXII.

The Court erred in overruling the objection of defendant to that certain question asked of witness B. B. Grinnell: "What would be the cost of that or the value of it?" to which ruling of the Court the defendant excepted.

XXIII.

The Court erred in denying the motion of defendant to strike out all of the testimony of witness B. B. Grinnell relative to work done on the Baltimore claim, to which ruling and order of the court the defendant excepted.

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XXIV.

The Court erred in overruling the objection of defendant to that certain question asked of witness B. B. Grinnell: "What do you say as to the correctness of the statement in that paper?" to which ruling of the Court the defendant excepted.

XXV.

The Court erred in granting the motion of plaintiff to strike out that certain answer of witness O. J. Stowe: "Well, I don't know only from the report I get from the driller when he comes or sends in some work" to which ruling of the Court the defendant duly excepted.

XXVI.

The Court erred in granting the motion of plaintiff to strike out that certain answer of witness O. J. Stowe: "Yes, the work is still going on out there. They report that it is" to which ruling of the Court the defendant excepted.

XXVII.

The Court erred in granting the motion of plaintiff to strike out any portion of the testimony in the direct examination of the witness O. J. Stowe, to which ruling of the Court the defendant excepted.

XXVIII.

The Court erred in overruling the objection of defendant to that certain question asked witness C. J. Millard: "What did you do

along about that time, locating it as definitely as you can, in regard to the moving of machinery from that district, if anything?" to which ruling of the Court the defendant excepted.

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XXIX.

The Court erred in overruling the objection of defendant to that certain question asked of witness C. J. Millard: "Mr. Millard, did you ship machinery or pipe or other materials out of the district north of Tar Creek in along about 1901 and 1902?" to which ruling of the Court the defendant excepted.

XXX.

The Court erred in overruling the objection of defendant to that certain question asked of witness C. J. Millard: "During all of the time that he held himself out as Superintendent of the Union Oil Company did he give you instructions as to what you should do in your special territory?" to which ruling of the Court the defendant excepted.

XXXI.

The Court erred in denying the motion of defendant to strike out the testimony of witness C. J. Millard: "I shipped material and machinery from that territory during the period,—year- 1901 and 1902. It consisted of boilers, engines, casing, pipe, rig timbers, rig irons and tools. It came from claims North of Tar Creek, the Twilight claim, and the Black Jack" to which ruling of the Court the defendant excepted.

XXXII.

The Court erred in overruling the objection of defendant to that certain question asked of witness C. J. Millard: "Do you know whether the Union Oil Company did any work on any of the
213 properties that I have enumerated in 1904?" to which ruling of the Court the defendant excepted.

XXXIII.

The Court erred in granting the motion of plaintiff to strike that certain question asked of defendant C. J. Millard and the answer thereto, to-wit: "Q. Up to and including 1903, you did work in that district, which was applicable to those claims?" "A. Yes sir." to which ruling of the Court the defendant excepted.

XXXIV.

Such other specifications of errors as may be necessary to state the errors claimed by the plaintiff resulting from the action of

the court on the rulings reserved by the Court on the admission of testimony in the course of the trial, as in this statement herein before indicated and the defendant will request the plaintiff and the Court at the time of the settlement of this statement to be allowed to insert herein such additional specifications of errors as may be necessary therefor, the defendant not now knowing what action was taken by the court on said reserved rulings.

Specifications of Points Wherein the Evidence is Insufficient to Justify the Findings and Decision of the Court.

That the evidence was and is insufficient to justify the findings and decision of the Court in the following particulars:

214 I.

It does not sustain the allegations or any of them of the amended Complaint denied in the answer thereto.

II.

That it is insufficient to justify and does not sustain all or any of the following findings of the Court:

The findings and decisions:

That the J. P. Brunton therein named was the agent of the locators of the so-called Schley claim in the posting of notice of application thereof on February 5, 1910, or otherwise: That simultaneously with the posting of said notice of location or at all the said so-called placer mining claim was marked by erecting monuments upon its exterior boundaries so that its boundaries could be readily traced; that after said location notice was posted and the boundaries of said claim marked upon the ground, plaintiff and his co-locators went into the occupancy of said Schley placer mining claim and remained in occupancy thereof until on or about April 10, 1910, or during any of the time prior thereto or at any time went into the possession or occupancy thereof; or that on or about April 10, 1910, one Reynolds and his associates, incorporated as the Middle Sespe Oil Company, went into the occupancy of said Schley placer mining claim with the consent and by the agreement of the plaintiff or with the consent and by the agreement of plaintiff said Reynolds and his associates remained in the occupancy thereof only until the latter part of August, 1910.

215 III.

That on the contrary the evidence shows and was and is sufficient to justify findings and decision of the Court as follows:

That on February 5, 1910, the date of said alleged location of the Schley claim by the plaintiffs and said J. P. Brunton, and prior thereto and at all times since, the land claimed as such Schley claim was not unappropriated public mineral land of the United States

or subject to location, for the reason that the same had been theretofore located and under such location was claimed by the Union Oil Company of California as the Rawley placer mining claim;

That said Union Oil Company of California was in possession thereof by and through its lessees, Slocum and Mitchell; that said Slocum and Mitchell had done the annual work thereon for the year 1909, by the construction of a road to a rig site on the Southeast corner thereof in December, 1909, and by themselves, their assigns and lessees were also actively in possession thereof under said Rawley claim and said work and with full intention and purpose of continuing the same at all times and after the latter part of 1909 and of developing oil thereon by the continuous occupancy thereof and the doing of development work, to-wit: the sinking of a well thereon in good faith;

That on or about the 25th day of February, 1910, while and when the Union Oil Company of California was so in possession of said property by and through its said lessees Mitchell and
216 Slocum, said Mitchell went upon said land with one Reynolds representing Reynolds and Mann, who *were* their associates afterwards organized the Middle Sespe Oil Company for the purpose of taking over and developing said property and in all respects carrying out the terms of said lease of Mitchell and Slocum from the defendant, and negotiated assignment of the Slocum and Mitchell lease to said Reynolds and Mann; that at said time there was no one in possession or occupancy of or upon, neither had any work of any kind whatsoever been done upon said land by and for the locators of said Schley placer mining claim; that said Reynolds and Mann forthwith, with the assistance of said Brunton rendered them in the city of Los Angeles, without any disclosure to them of the claim of the plaintiff or of any other person to said land, prepared a bill of material for the construction upon said land of a standard drilling rig and outfit for the purpose of sinking on said land a well for the production of oil thereon; that said material was forthwith shipped by said Reynolds and Mann, as assignees of said Slocum and Mitchell lease, from Los Angeles to Fillmore, to the nearest shipping point to said land on the Southern Pacific Railroad, and was thence hauled to a place called "the foot of the Hill" en route to said land; and afterwards hauled thence to and upon said land; that thereafter said Reynolds and one Wilson went upon said premises for the purpose of locating the place and site for drilling said well, but were met thereon by said Brunton, who then for the first time disclosed the existence of any adverse claim known to or made by himself or any
217 associates and with force and personal opposition claimed that he was there to protect said lands, forbade said Reynolds to come or be upon the same, and forthwith by the connivance and assistance of the plaintiff, his agents and attorneys instituted and promoted such opposition to the continuance of the development of said land by said Reynolds and Mann and their Middle Sespe Oil Company; that the same was by said plaintiff, his agents and

attorneys delayed unlawfully and without right and without knowledge of the defendant:

That thereupon, to avoid and overcome the unlawful and unjust demands of said Brunton and the plaintiff, said Mitchell, without any co-operation whatsoever, from his assignees, Reynolds and Mann, or the Middle Sespe Oil Company, entered into negotiations with said plaintiff and his attorneys for an adjustment of the situation thus created by the voluntary and unjustifiable intervention of the plaintiff; that pending the same, and without any knowledge of the defendant, the plaintiff carried on through said Brunton and other clandestine and secret agents and means, a campaign of intimidation and interference against said Reynolds and Mann for the purpose of causing them to withdraw from said premises and did, without the knowledge of the defendant, purchase from said Reynolds and Mann the lumber and material so placed by them upon said Rawley claim, and did by means of the same and without the knowledge of the defendant, unjustly and unlawfully install one O. J. Stowe as the occupant of said premises as the successor and in place of said Reynolds and Mann;

218 That the value of the material so placed upon said land by said Reynolds and Mann was more than Twenty-three Hundred Dollars ($2300) and said material was in all respects ample and sufficient for the construction thereon of a standard drilling rig sufficient for the sinking of an oil well on said lands;

That there afterwards developed, by communication from said Stowe to one Grinnell, the superintendent of the defendant in said field, that said Stowe was not claiming under said Slocum and Mitchell lease nor pretending to operate thereunder, but was claiming in opposition to the rights of defendant to said land and that forthwith thereafter, to-wit, immediately upon the same day, the defendant proceeded to procure, transport to and install and place upon said Rawley claim, and did so install and place thereon, promptly and without delay, material and men for the sinking thereon, and did proceed diligently and industriously, in good faith, to and with the sinking thereon an oil well for the development of resources thereon until it was finally restrained and prevented from continuing therewith by the injunction and order of this Court in this action, by which only it is still so restrained;

That said material for said Standard rig *was* so placed on said land by Reynolds and Mann was acquired and used by said O. J. Stowe in and as a necessary part of the materials used by him in operations done or had by him upon said premises by way of preparing to sink a well thereon; and said evidence shows that the plaintiff by and through its lessees was at all times from the latter part of 1909

219 to and until its restraint by the injunction of said Court in this action in the possession and occupancy and in good faith proceeding with the development of the mineral resources thereof and in which it was hindered only by the injunction and order of this Court made herein as aforesaid;

That the pretended location of the Schley placer mining claim on said land and the pretended occupancy thereof by said plaintiff

through said Brunton and the interference of said plaintiff, as aforesaid, with the lessees of the defendant and the said assignees of said lessees, and the acts of said Stowe in entering thereon were all done by and with the knowledge on the part of said plaintiff and his agents and attorneys and of said Stowe of the rights of the defendant of, in and to said land, and were wrongful, unjustifiable and by way of trespass upon the rights and property of the defendant;

That further, on the contrary the evidence shows and was and is sufficient to justify findings and decision of the Court as follows:

That at all times from and after about the month of May, 1909, defendant was the owner, in the possession and entitled to the possession — the Sampson, sometimes called the Sulphur placer mining claim, mentioned in the pleadings herein, and of said Rawley claim; that no person or company or corporation other than the defendant was at any time interested in or the owner of any part of said last two claims; that the lands embraced in said last two claims are oil, or petroleum, placer mining grounds and are chiefly valuable
220 therefor; that the east line of said Sampson or Sulphur claim coincides and is identical with the South half of the west line of said Rawley claim and that said two claims are thus adjacent and contiguous with each other; that there is in each and both thereof an oil bearing sand and formation; that the same is shallower,—that is to say, nearer to the surface,—in and under said Sampson or Sulphur claim, and that the pitch thereof is easterly into and under said Rawley claim, so that the same is deeper in said Rawley claim than in said adjacent Sampson or Sulphur claim;

That in or about the month of May, 1909, the Stockholders Oil Company, as the lessee of Union Oil Company of California, the defendant herein, entered upon and began the sinking of a well on said Sampson or Sulphur claim at a place about one thousand feet north of the south line and about one thousand feet east of the west line thereof for the discovery and production of oil therein and therefrom;

That during the year 1909, said well was sunk by the Stockholders Oil Company as such lessee, of the defendant, to the depth of about 145 feet; that the drilling operations thereon were interrupted temporarily by the Winter seasons of the years 1909 and 1910, but that in or about the month of May, 1910, said Stockholder's Oil Company again commenced the further sinking of said well and continued therewith industriously and in good faith up to the time of the trial of this action, when said well had been sunk to a depth of about 365 feet, and petroleum oil had been discovered thereon and work
221 was at the time of the trial of this action still in progress and intended to be continued by said Stockholder's Oil Company, as such lessee of the defendant in good faith, to the completion of said well, and the obtaining therein of oil in satisfactory and paying quantities;

Also that said Sampson and said Rawley claims are so situated with respect to each other and the oil bearing sand and formation which is the same in each claim so lie and dip as aforesaid from said Sampson into said Rawley claim that the sinking of said well on said

Sampson claim as aforesaid, tended at all times from and after the beginning of the sinking of said well, and tends to develop and determine the mineral character and to develop, determine and establish the oil bearing character alike of said Sampson claim, and of said Rawley claim, and that it was the purpose, intention and expectation of said defendant Union Oil Company of California, in sinking said well by and through its said lessee, Stockholder's Oil Company, on and in said Sampson oil claim, to determine the mineral character and to establish and determine the oil bearing character of said well as a test well for that locality of said Sampson and said Rawley claims alike;

That by reason of the facts aforesaid, the land embraced in said Rawley claim which is identical with the land claimed by the plaintiff to constitute said so-called Schley claim, was, at all times from and after the beginning of the sinking of said well in said Sampson mining claim, appropriated to the uses and purposes of this de-
222 fendant as and constituting said Rawley claim of the defendant and was thereby segregated from the public domain and was not open, unoccupied or vacant public mineral land of the United States, nor in any wise open for location, occupancy, claim or entry as such, but any person or corporation whatsoever, excepting only the defendant, and that any and all pretended entries or goings upon of any kind, upon said land or any part thereof of said plaintiff, his co-locators, his agents, servants or attorneys, his lessees, assignees or privies, at any time or times referred to in his said amended complaint or at all, were unlawful entries, goings upon, and trespassing upon the possession, occupancy and rights of the defendant in and of said land, constituting said Rawley claim.

IV.

That the evidence shows and is sufficient to justify the findings that the well on the Arizona claim referred to in the Amended Answer to the Amended Complaint and in said findings was abandoned in 1900; that on the contrary the most the evidence can be said to show as adverse to the defendant is that by reason of the oil discovered in said well being heavy oil and at that time unsuited to the purpose and use of the defendant, the further pumping and operation of the same was discontinued.

V.

That the evidence shows and is sufficient to justify the finding that no drilling or other development work was ever done upon the
223 said tract of land known as the Schley or Rawley placer mining — by defendant Union Oil Company of California, with the exception of the rig grade having been made by L. H. Mitchel and Thomas A. Slocum lessees of said defendant, in December, 1909, the cost of which grade did not exceed the sum of $100.00; that on the contrary the evidence shows that in addition to the development

work so specified in said finding and amounting to at least $100.00, the defendant by and through Reynolds & Mann and the Middle Sespe Oil Company, the assignees of said Mitchel and Slocum of and under their lease from the defendant, the material necessary for the construction of a standard rig for sinking the well on said Rawley or Schley claim was procured and shipped, hauled and delivered to and upon said Rawley claim in good faith for the purpose of sinking a well thereupon; that the same was without the knowledge or consent of this defendant, diverted from that use by the plaintiff and said Stowe, both of whom, at all times knew the relation of said Reynolds and Mann and of said material to defendant, and the protection of its rights, that immediately after the defendant through its Superintendent Grinnell was apprised that said Stowe was adverse to the interest of this defendant and said material was not being used for the defendant, for which they were placed upon and intended to be used upon said land to-wit:—for the sinking of an oil well therein, the defendant proceeded at once to place men and materials upon said Rawley claim for the sinking of a well thereon for the production of oil therefrom and diligently, continuously and in good faith,
224 pursued such object until finally restrained by the order of this Court herein.

(Endorsed:) Filed October 9, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

It is hereby stipulated and agreed that the foregoing 143 pages constitute and shall be the engrossed statement of motion for new trial, including specifications of insufficiency of evidence and error of law in the above entitled matter, and the same may be settled as such.

Dated October 7th, 1911.

ALTON M. CATES,
Attorney for Plaintiff.
T. O. TOLAND,
ARTHUR H. BLANCHARD AND
DON G. BOWKER,
Attorneys for Defendant.

The foregoing statement on motion for new trial including specifications of insufficiency of evidence and errors of law is hereby allowed and settled by me this 9th day of October, 1911.

ROBERT M. CLARKE, *Judge.*

(Endorsed:) Filed October 9, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

225 In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Notice of Appeal.

To S. R. Smith, plaintiff, and Alton M. Cates, attorney for the plaintiff in the above entitled action:

You will please take notice that the defendant in the above entitled action does hereby appeal to the Supreme Court of the State of California, from the judgment of said Superior Court, entered, given, made and rendered in said action on the 1st day of March, 1911, in favor of the plaintiff in said action and against the defendant in said action, and from the whole thereof.

Dated August 28, 1911.

DON G. BOWKER,
ARTHUR H. BLANCHARD,
THOMAS O. TOLAND,
Attorneys for Defendant.

(Endorsed:) Filed Aug. 30, 1911. J. B. McCloskey, Clerk, by Robert M. Sheridan, Deputy Clerk.

226 MONDAY, October 16, 1911.

Court meets at 10 o'clock A. M., present Hon. Robert M. Clarke, Judge, J. B. McCloskey, Clerk, and E. G. McMartin, Sheriff.

S. R. SMITH

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation.

Ruling on Motion for New Trial.

The defendant's motion for New trial in the above entitled action, having been regularly continued until this time, now comes on for hearing pursuant to said defendant's Notice of Intention to Move for New Trial, filed herein Mar. 11, 1911, and upon the grounds as set forth in said Notice of Intention, to-wit:

1. Newly discovered evidence material to the defendant, which it could not with reasonable diligence have discovered and produced at the trial.
2. Insufficiency of the evidence to justify such decision.
3. That said decision is against the evidence.
4. That such decision is against the law.
5. Errors in law occur-ing at the trial and excepted to by the defendant.

Now, after due consideration and deliberation, it is ordered by the Court that said Motion for New Trial be, and the same is hereby denied.

227 In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Notice on Appeal.

To the Plaintiff, S. R. Smith, and his attorney, Alton M. Cates:

Please take notice that the defendant in the above entitled action hereby appeals to the Supreme Court of the State of California, from the order made and rendered in the Superior Court on the 16th day of October, 1911, denying defendant's motion for a new trial. Such order made and entered upon the minutes of said court on the 20th day of October, 1911.

T. O. TOLAND,
ARTHUR H. BLANCHARD, AND
DON G. BOWKER,
Attorneys for Defendant.

228 (Endorsed:) Received copy of the within Notice of Appeal this 27th day of October, 1911. Alton M. Cates, Attorney for plaintiff.

In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Stipulation.

It is stipulated that the transcript on appeal herein, which includes the following documents:

1. Complaint to quiet title for injunction.
1½. Answer to complaint.
2. Cross-complaint.
3. Answer to cross-complaint.
4. Order to strike out cross-complaint of defendant.
229 5. Amended complaint to quiet title and for injunction.
5½. Answer to amended complaint.
6. Demurrer to amended complaint.

7. Order over-ruling demurrer.
8. Amended Answer to Amended complaint.
9. Findings of fact and conclusions of law.
10. Judgment.
11. Notice of intention to move for new trial.
12. Notice of appeal from judgment.
13. Bill of exceptions.
14. Motion for new trial.
15. Order of court over-ruling same.
16. Notice of appeal from order refusing new trial.
17. Certificate to transcript and to undertaking on appeal, etc.,

in due form have been filed.

Without waiver of objection to any defect in proceedings for taking appeals except as to contents of transcript.

Dated December 1st, 1911.

ALTON M. CATES,
Attorney for Plaintiff.
T. O. TOLAND,
ARTHUR H. BLANCHARD, AND
DON G. BOWKER,
Attorneys for Defendant.

230 In the Superior Court of the State of California in and for the County of Ventura.

S. R. SMITH, Plaintiff,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Stipulation that Transcript on Appeal is Correct and that Undertakings on Appeal were Duly Made and Filed.

It is hereby stipulated and certified by the respective counsel for plaintiff and the appellee; and the defendant and the appellee in the above entitled action; that the foregoing is a full, true and correct transcript of the records on appeal from the judgment in this cause, and from the order of the Superior Court denying the defendant's motion for a new trial in this action; according to and in pursuance of the stipulation of said counsel, dated December 1st, 1911, as in this transcript above set forth; and that the said transcript is in full compliance with said stipulation.

And it is further stipulated and certified that undertakings on appeal, both from the judgment herein and from the said
231 order denying motion for new trial, in due form have been properly filed.

Dated December 1st, 1911.

ALTON M. CATES,
Attorney for Plaintiff and Appellee.
T. O. TOLAND,
ARTHUR H. BLANCHARD,
DON G. BOWKER,
Attorneys for Defendant and Appellant.

232 Receipt of a copy of the foregoing transcript on appeal for the Judge of the Superior Court of Ventura County, California, this 12 day of January, 1912.

J. B. McCLOSKEY,
County Clerk of Ventura County, California, and ex-Officio Clerk of the Superior Court Therein.

Received copy of the foreging transcript on appeal this 15th day of January, 1912.

ALTON M. CATES,
Attorney for Plaintiff and Respondent.

233 In the Supreme Court of the State of California.

L. A. No. 3140.

S. R. SMITH, Plaintiff and Respondent,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant and Appellant.

Appeal from the Superior Court of the County of Ventura, State of California.

Appellant's Opening Brief.

Alton M. Cates, Attorney for Respondent.
Thos. O. Toland, Attorney for Appellant.

Filed this 12th day of March, 1912. B. Grant Taylor, Clerk; M. C. Van Allen, Deputy Clerk.

234 In the Supreme Court of the State of California.

S. R. SMITH, Plaintiff and Respondent,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation Defendant and Appellant.

Appellant's Opening Brief.

This action involves a controversy over one hundred and sixty (160) acres of land in Ventura County, claimed by the respective parties under locations of the same as oil land under the Mining Statutes of the United States.

As appears from the amended Complaint, (Tr. Fols. 50-58), the action is in the form of an action to quiet title and seeks relief by injunction also. (Tr. Fol. 56.)

The mining claim of the plaintiff covering said land is
235 called the "Schley"; that of the defendant the "Rawley." The amended Answer, (Tr. Fol. 88), alleges that the land af-

fected by the two claims is identical and the Findings of Fact (Tr. Fol. 112), are to the same effect.

The answer of the defendant is:

First. A denial of each allegation of the complaint, except that which states that the property in controversy is chiefly valuable for petroleum oil;

Second. That the defendant is the owner of the land described in the complaint under an oil Placer mining claim called the "Rawley," and also that the defendant is owner of a Placer mining claim called the "Sampson," which is contiguous to and adjoins the "Rawley" claim on the west so that the south half of the west line of the "Rawley" coincides with the east line of the "Sampson"; that the "Sampson" claim embraces one hundred and sixty (160) acres and is chiefly valuable for the petroleum and other mineral oils therein contained, and that during the two years preceding the commencement of this action the defendant was in the possession of said "Sampson" claim through its lessee, "drilling a well thereon for the development of petroleum oil," in which well it had discovered oil;
and that said work and labor of drilling said oil well "tends
236 to and will tend to the development and to determine the oil bearing character of said 'Rawley' claim." (Tr. Fols. 91-93.)

The Answer further alleges that all of the lands described therein are chiefly valuable for petroleum oil, and in particular that on the "Arizona" oil claim therein described, the defendant had a discovery of oil (Tr. Fol. 94), and the Findings of Fact are to the same effect. (Tr. Fol. 114.)

At the time of the commencement of the action no well had ever been sunk for oil, nor had any discovery of oil ever been made, either by the plaintiff or the defendant, upon land in controversy.

For a further and fuller statement of the facts of the case as shown by the evidence reference is here made to the Summary thereof set forth in Transcript Folios 628-655.

The Appeal from the Judgment.

1. The facts found do not cover all of the issues made by the pleadings.

In addition to the answer of denial, the defendant in its Answer, alleges: (Tr. Fols. 88-94),

That it is the owner of three contiguous oil Placer mining claims, the "Rawley," being the claim in suit, the "Sampson," adjacent to
the "Rawley" on its west side, and the "Arizona" adjacent to
237 the "Sampson"; said three claims thus being contiguous;
that it had theretofore, by sinking a well, made a discovery of oil in said "Arizona" claim, and further alleges more particularly, as follows: That it was the owner, in the possession and entitled to the possession of the "Sampson" Placer mining claim adjacent to the "Rawley" or "Schley" on the west; that for two years prior to the commencement of this suit it had been sinking, and was at the time of the commencement of the suit, sinking and drilling a well on the

said "Sampson" claim for the development of petroleum oil thereon; that it had made a discovery of oil therein, and was continuing the sinking of said well, and "that said work and labor of drilling said oil well (on said 'Sampson' claim) tends to and will tend to the development and to determine the oil bearing character of the real property and Placer mining claim hereinabove described and known as the 'Rawley' Placer mining claim."

There is no finding responsive to this issue tendered by the Answer.

The fifth Finding (Tr. Fol. 114) is to the effect that the defendant was at all times from February 5th, 1910, the date of the posting of plaintiff's Notice of Location on said "Schley" claim, to November 25th, 1910, the date of the commencement of the action,
238 through the defendant's lessee, Stockholders Oil Company, causing a well to be drilled on the "Sampson" claim adjoining the "Schley" Placer mining claim on the west; but this is the only finding responsive to any of these issues tendered by the Answer; so that the allegation of the Answer that said work referred to in said Finding Five, as being done in the drilling of the well on the "Sampson" claim by the defendant, through its lessee, Stockholders Oil Company, "tends to and will tend to the development, and to determine the oil bearing character of the real property and Placer mining claim hereinabove described and known as the 'Rawley' Placer mining claim," is not responded to anywhere in the Findings.

This issue, upon which the Court made no finding, was a very material one in the case.

See Act of Congress, approved February 12, 1903, 32 U. S. Statutes at Large, 825.

The full text of this Act is, as follows:

"That where oil lands are located under the provisions of Title Thirty-two, Chapter Six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous, and owned by the same person or corporation, not exceeding five claims in all; Provided, That said labor will tend to the development
239 or to determine the oil bearing character of such contiguous claims."

The clear purpose of this Act was to encourage the prospector for oil to go into undeveloped fields, found his camp, make locations of not exceeding five contiguous claims, so situated on the formation that discovery on one claim will tend "to determine the oil-bearing character" of the remaining claims of his group, proceed to the testing of the oil bearing character thereof by the sinking of one well upon one claim of his group, which should not exceed five in all, and in the meantime be protected in his rights to his claims (not exceeding five in all) constituting his group.

The purpose of the Act was evidently to relieve the miner for oil from the very serious burdens and conditions which were placed upon him when "Congress enacted that locations could and should

be made of public lands containing petroleum, or other mineral oils, under the laws relating to placer mining claims."

Act Feb. 11, 1897, 29 Stats. at Large, 525.

McLemore vs. Express Oil Co., 40 Cal. Dec. 371.

This application of the placer mining law by the Act of Congress last cited to public lands containing petroleum, as remarked
240 by Mr. Justice Henshaw in the case last cited, caused the Courts to be "at once confronted with serious difficulty in their endeavor to obey the Congressional mandate, and fit the placer mining laws to the exigencies of oil locations, which, in their nature were radically dissimilar" from the placer deposits of gold on flats and in bed streams, to which the placer mining law was originally intended to be applicable, and where discovery could be made in the wash of streams, or by the turning and panning of a single shovelful of dirt, without material expense or great endeavor

It was most natural, therefore, that Congress should, in the light of the experience of six years of the application of the placer mining law to oil locations, seek to give relief by the "Five Claims Act" quoted above, against the hardship imposed by the placer method of securing rights to oil lands. It was soon evident that oil mining, or the initiation of defensible rights to oil claims, was most hazardous to those undertaking it, because of the holdings of the courts that discovery was necessary to the perfecting of a placer mining claim, and the geological fact, demonstrated in all oil fields, that, in order to make discovery of oil in a claim, it is necessary to sink a well for that purpose at least many hundred, and in most cases several
241 thousand feet deep, and to expend therein large sums of money ranging from $10,000 up.

"It is well established that, the sole power of disposition and control of the public lands being vested by the Constitution of the United States in Congress (Const. U. S. Art. IV, Sec. 3), Congress could, at any time, change its policy in regard to those lands, so long as vested rights were not impaired."

McLemore vs. Express Oil Co., Supra., decided Nov. 17, 1910, by the Supreme Court of California.

All rules which have been enforced or recognized by the courts, Federal and State, governing the initiation and tenure of rights to mineral lands, both lode and placer, start with and are but deductions from the Acts of Congress and the Statutes of States and Rules of mining districts, not in conflict with the Acts of Congress on the subject. Congress, being vested with full power to dispose of the public lands, it follows that any change of policy in that behalf, established by any new Act of Congress, will operate by the force of its own terms, as the expression of the supreme legislative will, to modify all previous Acts of Congress on the subject, and all previous decisions of Courts interpreting and applying such previous Acts of Congress, Statutes of States and Rules of Miners.

242 It is the provision of said "Five Claims Act" that the labor may be done upon any one of the group of claims lying con-

nous, and owned by the same person, or corporation, for the benefit all of the contiguous claims of the group, "provided that said or will tend to the development or to determine the oil bearing aracter of such contiguous claims."

The proper interpretation and application of this Act will not be de unless force and effect be given to all of its terms.

The language of the proviso is in the alternative The work may done upon one claim for the benefit of all of the group, under the aditions named, provided:

1. That the labor will tend to the development of such contiguous ims; or

2. That the labor will tend to determine the oil bearing character such contiguous claims.

Thus, it is the fundamental, and yet the most evident new thought the proviso that the contiguous claims need not theretofore have ir oil bearing character determined, and that if it shall not have n determined, the work permitted under this Act may nevertheless done upon any one claim for the purpose of establishing, "de-mining," the oil bearing character of the contiguous claims.

There could be no more sane, reasonable or necessary pro-
3 vision of the placer mining law in its application to oil placers, in view of the great expense and difficulty incident to making scovery in an oil placer.

It is so well established as scarcely to need the citation of au-ority, that the discovery of oil in any place on a placer mining im, (located by eight persons and aggregating eight 20-acre ims) will be effectual to establish, "determine," the oil bearing aracter of the whole claim of 160 acres, and it is equally elementary at the oil bearing character of the land embraced in any claim will t be determined, that is, settled, established and fixed, until oil shall ve been discovered within its boundaries.

The language of the proviso of the "Five Claims Act," is that the rk may be allowed if it will "tend to determine the oil bearing aracter of the contiguous claims." The claims of the group, in der that the work on any one of them may be effectual, under this atute, to tend to determine the oil bearing character of any other im or claims of the group, must be situated so that a homogen-ous rmation extends from that claim into the other, or others of the oup, so that as a geological fact, it will follow that the discovery or development of oil on the claim on which the labor is done
4 will tend to prove, fix, establish, or "determine" the presence of oil in the other contiguous claim or claims in the homo-eneous formation.

This will, in all cases be a question of fact. It was so treated on e trial of this case, but the Court failed to make any Finding of ct upon the issue tendered by the Answer concerning it, and hence, the issue was most material, the judgment should be reversed.

2. The judgment is not sustained by the findings.

The facts found do not connect the plaintiff with any improve-ent upon the claim; they show him to have been an exploiter of e so-called "Shley" claim, seeking some one who might go upon it

and do work; they fail to establish any relation between the plaintiff and O. J. Stowe mentioned in the Findings and negative any present interest of the plaintiff in the so-called "Schley" claim. Moreover, the facts found as having been done by said Stowe are not sufficient to establish such a compliance with the Mining Law by him as to render the land in controversy appropriated from the public domain, or segregated therefrom, by virtue of the "Schley" claim, and entitling him to any possession thereof whatever as against other claimants, or entitling him to any possession thereof; that the statement of finding 3 (Tr. Fol. 42) "that ever since said 7th day of
245 October, 1910, said Stowe has been in the continuous occupancy of said placer mining claim, and has continuously and diligently prosecuted the work toward a discovery of oil therein and thereon," is, if anything, a conclusion of law, fails to state any facts from which the conclusion flows, and is generally so indefinite that it forms no basis for the judgment. The findings fail to show the nature of the occupancy found, and that it was such an occupancy as is contemplated and necessary in such case within the meaning of the mining law. It does not appear from the Findings that any machinery or tools appropriate for the sinking of an oil well were ever put upon the property by said Stowe, or that any drilling was done by him or what work was done or could have been done with the material, which it is found he purchased on the claim or brought upon it. In short, the facts found are insufficient to establish the possession of the property by the plaintiff directly or indirectly, as possession is necessary to be shown to meet the requirements of the mining law.

McLemore vs. Express Oil Co., 40 Cal., Dec., 371.

The Motion for New Trial Should Have Been Granted.

The errors of law at the trial, excepted to by the defendant
246 and set forth in the transcript, Fols. 601-624, and here expressly referred to, were such as to exclude from the case testimony material for the defendant, and to allow to come into the case immaterial and prejudicial testimony sufficient to entitle the defendant to a decision in its favor of the Motion for a New Trial.

The findings of fact are not sustained by the evidence.

The defendant here refers to and incorporates into this Brief the statement of facts which the evidence establishes, set forth in Tr. Fols. 628-655.

It was an essential element of the defense that the entry of Smith through Stowe in October, 1910, was clandestine and fraudulent, accomplished by purchasing the improvements of the defendant's tenants, Reynolds and Mann, without the knowledge of the defendant. Hence the ruling of the Court, excepted to by the defendant, (Tr. fols. 214-216) not allowing Stowe to answer whether he made any inquiry, at the time of purchasing the lumber, what the right of Hales was with reference to the lumber, was error, since it precluded the defendant from showing directly, the knowledge of Stowe that he was by purchasing that lumber clandestinely stripping the prop-

247 erty of the defendant of the material that was put there by its tenant for its development.

Likewise the court erred on the same subject matter when (Tr. fols. 212-213) Stowe was asked the question: "You knew at the time, or before you purchased the lumber that it was lumber of Reynolds and Mann?" to which he answered, "Well, I understood it was," which answer the court on motion struck out.

Defendant likewise calls especial attention to the error of the court, excepted to by defendant's exception No. 5 (Tr. fols. 234-235). The testimony stricken out was material to show method of intimidation and interference adopted by plaintiff as against the *the* tenants of the defendant, who were already in possession proceeding in good faith tto develop the property.

Likewise the court erred prejudically to the defendant in the ruling excepted to by defendant's exception No 8 (Tr. fols. 264 to 266) since it clearly appears from the evidence that Brunton was the agent and factotum of the plaintiff in locating the claim, and in all of the subsequent dealings in the matter, including the intimidation of the defendant's attendants, and the getting away from them without the defendant's knowledge, the materials put on the "Rawley"
248 claim by them for its development. These statements are equally applicable to defendant's exceptions Nos. 9 and 10 (Tr. fols. 266 to 270).

The testimony of E. L. Ward (Tr. fols. 471-477) abundantly proves the sinking of a well on the "Sampson" claim by the Stockholders Oil Company, the lessee of that claim from the defendant, continuing from the spring of 1909 to the time of the commencement of this action.

The testimony of Stowe (Tr. fols. 414-421) shows this well on the Sampson claim adjoining the "Rawley" was being sunk in good faith. The testimony of John Irwin (Tr. fols. 329 to 365) abundantly establishes the general oil bearing character of the "Sampson" and "Rawley" claims, and the homogen-ous formation extending and dipping easterly from said "Sampson" claim on which the "Stockholders Oil Company, the lessee of the defendant, was sinking the well in 1909 and 1910 up to the commencement of this action and shows that the sinking of that well would tend to develop and tend to determine the oil bearing character of the "Rawley" claim.

Notwithstanding this testimony, the court failed to make any finding on the issue tendered by the answer in this respect. This testimony, in connection with the other facts in the case, shows
249 the segregation of the "Rawley" claim from the public domain, the appropriation of it by the defendant so that it was not open to entry or location by the plaintiff at any time after May, 1909, and that the plaintiff's claims thereto were initiated and pressed unlawfully, and in trespass on the defendant's rights.

Act of Congress approved Feb. 12, 1903. 326 Statutes at Large, 825, being the same act hereinabove set out in full.

The entry of Stowe, through the connivance of the plaintiff and Brunton as agent, whereby they got away from Reynolds and Mann

by the methods shewn by the testimony, the lumber and materials placed by them as the tenants of the defendant upon the "Rawley" claim was clandestine and unjustifiable, and should not be allowed to form the basis of any claim to the land as against the defendant.

Miller vs. Chrisman 140 Cal., 440.

The Judgment should be reversed and the order denying defendant's Motion for a New Trial should be set aside.

Respectfully submitted.

THOMAS O. TOLAND,
Attorney for Appellant.

THOS. O. TOLAND.

250 In the Supreme Court of the State of California.

Hon. Robert M. Clarke, Judge.

S. R. SMITH, Plaintiff and Respondent,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant and Appellant.

Appeal from the Superior Court of the County of Ventura.

Affidavit of Service of Printed Points and Authorities.

C. M. Van Delinder, being first duly sworn, deposes and says: That she is and was at the time of the service of the Printed Points and Authorities herein referred to, a citizen of the United States, over the age of eighteen years, and not a party to the within entitled action; that she personally served the within Printed Points and Authorities on Alton M. Cates, Esq., attorney for the Plaintiff and Respondent in the within action by delivering to and leaving with said Alton M. Cates personally, at his office in the City of Los Angeles, County of Los Angeles, State of California, on the 12th day of March, 1912, a copy of said Printed Points and Authorities.

CARRIE M. VAN DELINDER.

Subscribed and sworn to before me, this 12th day of March, 1912.

M. C. VAN ALLEN,
Deputy Clerk Supreme Court of California.

Received copy of the foregoing Opening Brief of Appellant this eleventh day of March, 1912.

_____,
Attorney for Plaintiff and Respondent.

251 In the Supreme Court of the State of California.

L. A. No. 3140.

S. R. SMITH, Plaintiff and Respondent,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant and Appellant.

Appeal from Superior Court of Ventura County. Hon. Robert M. Clarke, Judge.

Brief for Respondent.

Alton M. Cates, Bradbury Bldg., 306 S. Broadway, Los Angeles, Attorney for Respondent.

Filed Mar. 25, 1912. B. Grant Taylor, Clerk, by M. C. Van Allen, Deputy.

252 In the Supreme Court of the State of California.

S. R. SMITH, Plaintiff and Respondent,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant and Appellant.

Statement of the Case.

On February 5, 1910, respondent and his seven co-locators, all of whom were citizens of the United States, located the placer mining claim known as the "Schley," and described in the amended complaint. [Trans. fols. 53-54.]

Said location was made by posting a location notice on the ground, and thereafter and on February 28, 1910, a copy of said location notice was recorded in the office of the county recorder of the county of Ventura, state of California, in book 19 of mining claims, at page 255. At the time of said location the said "Schley" placer
253 mining claim was duly marked with monuments at each corner thereof, and thereafter and on March 8, 1910, the seven co-locators of respondent joined in a quitclaim deed to respondent of said placer mining claim, which said quitclaim deed was thereafter and on November 16, 1910, duly recorded in the office of the county recorder of the county of Ventura, state of California, in book 100 of deeds, at page 271. After the posting of said location notice and marking of boundaries respondent went into possession and occupancy of said placer mining claim and remained in possession and occupancy of the same from said date of February 5, 1910. Said respondent built roads, erected buildings and had lumber on the ground necessary for the erection of a stand-

ard wooden drilling rig, and at the time of the commencement of this action was prosecuting the work diligently and continuously toward a discovery of oil upon said placer mining claim.

On March 5, 1883, Richard Gird and his seven co-locators, all of whom were citizens of the United States, located a placer mining claim known as the "Rawley" and described in the amended answer to the amended complaint on file herein, admitted to be the same property described in the amended complaint, and called the "Schley."

254 Said location was made by posting a location notice on the ground, and thereafter a copy of said location notice was recorded in the records of the mining district, within the limits of which the property was then situate. At the time of said location said placer mining claim was duly marked with monuments at each corner thereof, and thereafter and on September 18, 1895, said Richard Gird and his seven co-locators joined in a quitclaim deed to the Sespe Oil Company, and the rights of said locators by mesne conveyances now rest in appellant Union Oil Company of California. No work has ever been done upon said placer mining claim by said appellant with the exception of some work done by Thomas A. Slocum, in the latter part of 1909, which said work does not exceed the value of $100.00 [Trans. fols. 224-225], and with the further exception of work done by the Middle Sespe Oil Company under a compromise agreement to which respondent herein was a party.

Respondent prints herewith as an appendix to his brief the opinion of the trial judge, in which opinion there is a very clear statement of facts and an able and scholarly discussion of the law involved in this case.

255 Points and Authorities.

I.

Effect of So-called "Yard Decision."

The so-called Yard case (38 L. D., p. 59) need not, we believe, be discussed in connection with the legal propositions herein presented.

If the decision in the Yard case ever did correctly express the law, any effect which it might have upon this case has been nullified by the Act of Congress of February 16, 1911, known as the Flint-Smith Remedial Act.

Gruwell v. Rocca, 141 Cal. 417.

II.

Under the provisions of the Act of Congress of February 12, 1903, work done on one claim before discovery is not sufficient to hold that one claim and four claims contiguous thereto.

The Act of Congress of February 12, 1903, 32 Statutes at Large, 825—10 Fed. Statutes Annotated, 236, reads as follows:

"That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: Provided, that said labor will tend to the development or to determine the oil-bearing character of such contiguous claims."

256 This Act of Congress has never been construed by a decision of any court, but the decisions in California are all to the effect that the location is not perfected until a discovery has been made, and the most recent decision in this state, which reviews all previous decisions bearing upon the subject, is to the effect that where the location is incomplete no question of assessment work is involved.

McLemore v. Express Oil Company, 158 Cal. 559.

In the case last above cited the court, at page 563, said:

"But it is always to be borne in mind that until the perfection of the inchoate and incomplete location by discovery, the locator has, first, no vested rights which Congress is obliged to recognize. So that Congress may change its policy in regard to the lands to the extent even of excluding therefrom the diligent operator who has not made discovery. However inequitable such a proceeding might be, it in no way would be illegal."

This court also previously decided that discovery of oil on the portion of a claim deeded to another party does not operate as a discovery for the claim unless there shall be a specific agreement to that effect.

Merced Oil Mining Company v. Patterson, 153 Cal. 624.

257 The rule being now well settled that no location is perfect without a discovery (in other words, that there is no location until discovery shall have been made), and that the question of assessment work is not to be considered until the location is perfect, and it also being well settled that discovery of oil on a part of a claim held by one person or corporation does not inure to the benefit of the remainder of the claim held by a different person or corporation, there can be no doubt about the intention of Congress being that prior to discovery on one claim work done upon that claim cannot apply as assessment work on any other claim or claims.

III.

No location is complete without a discovery and until such a dis-

covery is made the question of assessment work does not enter into consideration.

McLemore v. Express Oil Company, 158 Cal. 559;
Weed v. Snook, 144 Cal. 439;
New England Oil Co. v. Congdon, 152 Cal. 211;
Nevada Sierra Oil Co. v. Miller, 97 Fed. 681;
Miller v. Chrisman, 140 Cal. 440;
Chrisman v. Miller, 197 U. S. 313;
Whiting v. Straup (Wyo.), 95 Pac. 849.

258 IV.

An attempting locator, having openly and in good faith entered upon a claim, has the right to continue in possession while he is endeavoring to make a discovery of oil and is entitled to the protection of a permanent injunction.

McLemore v. Express Oil Company, 158 Cal. 559;
New England Oil Co. v. Congdon, 152 Cal. 211;
Weed v. Snook, 144 Cal. 439;
Cosmos, etc. Co. v. Gray Eagle Oil Co., 104 Fed. 20, 112 Fed. 4;
Miller v. Chrisman, 140 Cal. 440;
Moore v. Massini, 32 Cal. 590;
Bettman v. Harness, 42 West Va. 433, 36 L. R. A. 566;
Erhardt v. Boaro, 113 U. S. 537.

Counsel for appellant in his opening brief, lays great stress upon the testimony of E. L. Ward [Trans. fols. 471-477], and upon this testimony appellant founds its claim to hold under the Act of Congress of February 12, 1903, the placer mining claim, the subject of this suit, and the claim upon which a well was being drilled; but it is not disclosed by the transcript nor by appellant's brief what other placer mining claims it seeks to hold by virtue of an alleged discovery upon the placer mining claim known as the "Sampson," "Doe Flat," or "Sunflower."

259 Said witness Ward testified under cross-examination [Trans. fol. 477]:

"Q. Now you say you got some oil. When did you get it? A. We got it this year (1910) in September; I think, we got a little, what drillers call a showing, a color. It was gotten at about 210 feet, and at 265 feet we got just the color. We didn't get oil in commercial and paying quantities. It wouldn't pay to perforate there to let that oil in."

It will be borne in mind that the "Schley" placer mining claim was located in February, 1910.

For the foregoing reasons it is respectfully submitted that the motion for a new trial was properly denied and that the judgment should be affirmed.

ALTON M. CATES,
Attorney for Respondent.

260 APPENDIX.

In the Superior Court of the State of California in and for the County of Ventura.

Robert M. Clarke, Judge.

S. R. SMITH, Plaintiff,
v.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant.

Opinion.

Appearances: For plaintiff, Alton M. Cates; for defendant, Don G. Bowker, Thomas O. Toland and Arthur H. Blanchard.

Syllabus.

(1) Yard Decision—Rulings of Land Department Not Binding on Court. While in the case neither plaintiff or defendant can perfect title or patent the entire 160 acres, the locators having conveyed claim prior to discovery, the ruling of the land department is not controlling on a state court trying the right to the possession of a mining claim between adverse claimants.

(2) Act of Congress of February 12, 1903, Called "Five Claims Act"—Discovery Necessary to Initiate Claim. The Act of Congress authorizing assessment work under certain conditions upon one of five contiguous claims, does not avoid the necessity of a discovery upon each of said claims. "Located" as used in the act means a "valid location" which must be preceded by a discovery.

(3) Good Faith of Locator—Injunction. It is held in this case that the evidence shows that the location of plaintiff was in good faith and open and above board, and while diligently prosecuting his work to a discovery he is entitled to an injunction restraining the re-entry of defendant.

Statement of Facts.

The plaintiff and seven associates, all of whom were citizens of the United States, on February 5, 1910, through an agent, J. P. Brunton, took steps to locate the placer mining ground de-
261 scribed as the "Schley" claim in the amended complaint on file herein. Said claim is upon the unsurveyed public domain of the United States in Ventura county and in what is generally known as the "Little Sespe." The location notice was posted on the ground by the agent on the aforesaid date and on February 28, 1910, a copy thereof was recorded in the office of the county recorder of Ventura county, in book 19 of mining claims, at page

255, and coincident with posting the notice monuments were placed at each corner of the claim. On March 8, 1910, plaintiff's seven associates or co-locators joined in a quitclaim deed to the plaintiff of said placer mining ground which was thereafter duly recorded in the office of the county recorder of Ventura county.

The nature and extent of the occupancy of the claim by plaintiff and his associates is difficult to determine from the testimony. The occupancy was by and through Brunton, as agent of the claimants. It appears that he placed a tent on or near the grounds at the time of the "paper location." It further appears that on the 10th of March, 1910, when H. I. Reynolds, claiming rights in this property derived through a lease of same by the Union Oil Company of California to Mitchell and Slocum, went upon the ground he found Brunton there, who informed him that he was there to protect the property and that some other people had taken it over. This turn of affairs was unexpected by Reynolds, who, with associates, had organized a company to operate the lease secured by Mitchell and Slocum from the Union Oil Company of California, defendant herein. Whereupon negotiations were entered into between Smith, the plaintiff, and Mitchell, the defendant's lessee, whereby Reynolds and his associates did again enter upon the ground about April 1, 1910, located a place for a well to be
262 drilled and hauled lumber upon the ground for which had been expended about $1,600.

Nothing was done by Reynolds and his associates thereafter tending to the development of the claim and they eventually sold the lumber. This was done without notifying the Union Oil Company of their intention not to develop the property or that they had sold the lumber. The total expenditure of Reynolds and associates, incorporated as Middle Sespe Oil Company, in developing the property was $2,375, including the $1,600 expended for lumber as aforesaid.

On the 5th day of October, 1910, after Reynolds and associates had to all intents and purposes abandoned the field, without notice, however, to the defendant herein, O. J. Stowe entered into agreement in writing with plaintiff, whereby Stowe agreed to organize a corporation to be known as Stowe Light Oil Company, with an authorized capital of $500,000 divided into five hundred thousand shares, and cause to be issued to plaintiff seventy-five thousand shares therein, which was to be the consideration for the transfer of the "Schley" claim to the proposed corporation. It was further stipulated that Stowe or the corporation should go into immediate possession and occupancy of the claim and with all due diligence proceed with the drilling of a well to a depth of two thousand feet, or to such less depth as might be necessary to find oil in paying quantities. In a few days thereafter Stowe went upon the property, made a location for a well, purchased the lumber that was on the claim, employed a rig builder and proceeded to build a rig, bunkhouse and cook-house, as well as purchased rig irons for a standard drilling outfit, and expended more than $2,000. Stowe was thus proceeding upon the claim to drill an oil well pursuant to his agree-

ment with plaintiff when this action was commenced on No-
263 vember 25, 1910, by plaintiff against defendant to quiet title and for an injunction, the defendant having a few days prior thereto entered upon the property for the purpose of grading a rig site and commencing operations thereon.

This identical mining ground was located on March 5, 1883, by Richard Gird and seven associates or co-locators, all of whom were citizens of the United States, and called the "Rawley" claim. Their location was made by posting a notice on the ground, and recording a copy thereof in the records of the mining district within the limits of which the property was then situate. The claim was duly marked with monuments and on September 18, 1895, Gird and his co-locators joined in a quitclaim deed of the same to the Sespe Oil Company, and by mesne conveyance the rights of the original locators now rest in the Union Oil Company of California, the defendant herein, who is also in occupancy, has developed and is still developing many mining claims in the "Little Sespe" district, among them being the "Samson" and "Shenandoah" claims contiguous to the "Rawley" on the west; the "Syracuse" on the east; the "Baltimore" to the south and "Arizona" or "Arcadia" west of the "Baltimore." A well is being drilled on the "Samson" claim by the Stockholders Oil Company, who, under lease from the defendant, have been operating thereon for over a year, encountering some difficulty in sinking the well but they have passed through sufficient oil sands to give every indication of a successful well. A producing well was developed upon the "Arizona" claim by the predecessors in interest of defendant in 1889, but after pumping for some time the well was abandoned in 1900. The Union Oil Company has yearly expended large sums in keeping the roads and trails which lead to the above-mentioned claims and all
264 property claimed by them in the "Little Sespe" district in repair so that ingress and egress might be had.

On November 6th, 1909, the defendant corporation leased to L. H. Mitchell and Thomas A. Slocum the "Rawley," and a contiguous claim, for a period of twenty years, containing, among other provisions, a clause that they should commence actual drilling for oil thereon on or before February 1, 1910, and carry on the same continuously and in good faith. It was also stipulated that the lessees should do all the assessment work on the claims and make the necessary affidavits thereof. Pursuant to the conditions of the lease the lessee did some work (a rig grade) upon the southwest corner of the "Rawley," which Slocum in his affidavit says was of the value of $100. This work was done in December, 1909. No drilling or other development was done on the claim under the lease except what was done by Reynolds and his associates hereinbefore set forth.

No discovery has been made by either plaintiff or defendant, and a few days prior to the commencement of this action, when Mr. Grinnell, the superintendent of the Union Oil Company's properties in Ventura county, learned from Mr. Stowe that his development was not being done under the Mitchell and Slocum lease, but under his contract with Smith, the defendant immediately placed a force

of men upon the claim to begin operations thereon. This I believe to be a fair statement of the facts as shown by the evidence.

The Law of the Case.

I. Under the present ruling of the Interior Department, charged with the administration of the laws affecting the sale and disposition of the public domain, neither plaintiff nor defendant will be able to patent the one hundred and sixty acres claimed. Neither has made a discovery of petroleum on the property. The plain-
265 tiff is the grantee of his seven co-locators prior to discovery. The defendant by mesne conveyance holds the title of the original locators of the "Rawley" claim under similar conditions. It is expressly held in the Yard case (38 L. D., p. 68):

"When an asserted placer claim of 160 acres, which is invalid, being without a discovery, is transferred to a single individual, it is inconceivable that he alone can perfect such a location by making a subsequent discovery, seven associates being necessary to initiate and perfect a valid location thereof."

This ruling has been recently upheld in the Bakersfield Fuel and Oil Company's case, one involving the application of the Yard decision to oil lands, wherein it is held that the applicant under similar conditions and circumstances must elect which twenty acres it would take and cast off the excess of one hundred and forty acres.

This proceeding in its present form has long been authorized by the statutes and decisions of the courts of this state, and the rulings of the land department are in no manner controlling upon this court in this proceeding, any more than the decisions here could determine the action of the Interior Department in the sale and disposition of public lands. The state court does not concern itself with the questions as to whether or not its judgment can be used in the land office. (Quigley v. Gillett, 101 Cal. 426; Mining Co. v. Bullion Mining Co., 9 Nev. 240; Gruwell v. Rocca, 141 Cal. 417.)

II. Defendant mainly relies upon the Act of Congress of February 12, 1903, 32 Statutes at Large, 825, called by counsel the "Five Claims Act," which is as follows:

"That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such
266 claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all; provided, that said labor will tend to the development or determine the oil-bearing character of such contiguous claims."

It is remarkable to note that while this statute has been in force for nearly eight years, it has never been construed or cited in any case in either the state or federal courts, so far as I have been able to find, assisted as I have been by the industry and learning of the counsel engaged in this case. The subject is therefore approached with some apprehension lest this court without the aid of the usual

"guide posts" may pursue the wrong course in arriving at the proper conclusion.

It may be remarked here, and the observation may apply to all acts of Congress on the kindred subjects, that the act is a fair example of hasty and ill-digested legislation, but as was said by Justice Henshaw in the very recent case of McLemore v. Express Oil Company, decided November 17, 1910 (40 Cal. Dec. 371), [158 Cal. 559], "When, however, Congress enacted that locations could and should be made of public lands containing petroleum or other mineral oils under the laws relating to placer mining claims (Act Feb. 11, 1897, 29 Stats. at Large, Chap. 216, p. 526) the court were at once confronted with serious difficulty in their endeavor to obey the congressional mandate, and fit the placer mining laws to the exigencies of oil locations which, in their nature, were radically dissimilar. Thus, it is well established, that the sole power of disposition and control of the public lands being vested by the constitution of the United States in Congress (Const. U. S., Art. IV, Sec. 3), Congress could at any time change its policy in regard to those lands so long as vested rights were not impaired."

267 It was therefore ably contended on behalf of the defendant that by the act referred to, Congress had changed its policy with regard to oil lands in that it provided that work might be done upon one of a group of five contiguous claims, provided that the work tended to the development or to determine the oil-bearing character of such contiguous claims, and this independent of a discovery on any of the five claims. In other words, that Congress, recognizing the great difficulty and expense incurred in drilling an oil well to a depth of two thousand feet or more in the rugged and practically inaccessible mountains and canyons constituting the major portion of what is left of our public domain, determined that by pursuing his work on one claim the oil locator might at once hold and eventually patent eight hundred acres of land, and that the word "located" as used in the act referred to the posting of the notice and marking the boundaries and did not mean a "valid location" of each of the five claims, which in each case must be preceded by a discovery.

In the case at bar, the testimony of John Irwin and other experts for whom I have much respect, clearly shows that the work being done on the "Samson" claim adjoining the "Rawley" or "Schley" claim on the west, by the defendant's lessee, will tend to determine the oil-bearing character of the mining ground in litigation.

This contention meets with my favor as not an inequitable provision in view of the obstacles now in the path of the oil locator who must expend large sums before he makes discovery and who certainly should be placed on a different footing from the miner for precious metals who initiates his claim by a discovery ofttimes at little or no expense. The Act of Congress upon which defendant so relies antedates by several months the decision in the cele-

268 brated case of Miller v. Chrisman (140 Cal. 440, decided September, 1903), wherein our Supreme Court so specifically and clearly defined what a discovery meant as applied to oil lands and

held "That the two requirements admittedly essential to the validity of a location * * * are, that the location must be distinctly marked upon the ground so that the boundaries can be readily traced, and that there must be a discovery of minerals within the limits of the land located. (U. S. Rev. Stats., Sec. 2324; U. S. Comp. Stats., 1901, p. 1426.)"

While it may seem strange that no one has ever before made bold to contend that the act of Congress quoted relieved the locator of making discovery, the courts have continually and repeatedly held that the doctrine declared in Miller v. Chrisman, supra, is the correct one, and in regard to discovery as applied to oil lands, have uniformly adopted this decision (Nevada Sierra Oil Co. v. Miller, 97 Fed. 681; Chrisman v. Miller, 197 U. S. 313; Weed v. Snook, 144 Cal. 439), and while I entertain no uncertain ideas of what the law of the case should be, it is certainly not the province of a trial court to overrule what seems to be the law on the subject so clearly and ably expressed by the appellate courts.

The use of the word "located" in the statute certainly implies a "valid location," which, as observed, requires a discovery. This must be the case as the act refers to "the annual assessment labor" and assessment work has nothing to do with the initiation or location of the claim, as does discovery and marking boundaries, but it is the condition of continued possession. (McLemore v. Express Oil Co., 40 Cal. Dec. 373; [158 Cal. 559]; 27 Cyc. 588.) As said by Lindley in his work on Mines, Vol. 2, 623, "Discovery was made the source of title and development, or working, the condition of its preservation. This development was called by the miners
269 'assessment work.'" It therefore follows that in the absence of discovery upon the "Rawley" or "Schley" claim, that the defendant cannot rely upon the provisions of the Act of Congress referred to.

III. It is further urged on behalf of the defendant that the plaintiff's entry was not peaceable, open and above board, or in good faith, and that defendant and its predecessors, who have been in possession of this entire field since 1883, and as has been truly said by counsel, "pioneered the field," built the roads and extracted oil from the adjoining claims in this field, should not be thus ousted by one in the position of plaintiff. True as this may be as to the conduct of defendant with reference to these lands, the evidence fails to show any lack of good faith on the part of plaintiff, who, through Stowe, at the time of the commencement of this action, and for some six weeks prior thereto, was diligently prosecuting his work toward a discovery. This cannot be said of defendant during such a period. In fact, at no time have they made any active effort to discover oil on this claim. In its lease of this claim to Mitchell and Slocum, which has not been cancelled, of date November 6, 1909, the defendant expressly stipulated that the lessees should commence the actual operations of drilling for oil upon the land on or before February 1, 1910, and that operations so commenced should be continuous and in good faith. No such work was ever commenced, and can defendant, with the knowledge of the acts of its tenants, and

who has held this land for so many years, now complain and say that it did not know that Stowe was not working under its lease? It was the defendant's duty to know the source or reason for Stowe's activity on the property, and had it been prosecuting the work of discovery with due diligence, which is the only means sanctioned by law for occupancy of oil lands prior to discovery, at any time
270 prior to October 5, 1910, it would not be a defendant in this action. Prior to the work of Stowe, the possession of plaintiff was not sufficient to hold the claim. Plaintiff was apparently trying to interest capital, and his possession in other respects was such as Justice Henshaw held insufficient in McLemore v. Express Oil Company, supra, in the following language: "It does not mean the pursuit of capital to prosecute the work. It does not mean any attempted holding, by cabin, lumber pile or unused derrick."

While the testimony of the witness Brunton, and his demeanor on the stand, was such as to give some credence to the contention that his entry on behalf of plaintiff and his associates was clandestine and not open and above board, the testimony of plaintiff is clear and convincing and his entire conduct with reference to the property is such as to indicate his good faith. While it is true that he entered into a tentative arrangement in the nature of a compromise with defendant's lessee, Mitchell, it is equally true that he never at any time recognized defendant's right to the possession of the claim, and within a few days after October 5, 1910, through the agency of Stowe, active and diligent operations were commenced on the property.

The law is now well settled that the attempting locator, while he is diligently prosecuting his work to a discovery, is fully protected in his possession, or, to use the language employed in Miller v. Chrisman, supra, "One who thus in good faith makes his location, remains in possession and with due diligence prosecutes his work toward a discovery, is fully protected against all forms of forcible, fraudulent, surreptitious or clandestine entries and intrusions upon his possession. Such entry must be always peaceable, open and above board and made in good faith, or no right can be
271 founded upon it." (Weed v. Snook, 144 Cal. 439; Cosmos etc. Co. v. Grey Eagle Oil Co., 104 Fed. 20, 112 Fed. 4, 190 W. S. 301; Whiting v. Straup, 17 Wyo. 1; Moffat v. Blue River etc. Co., 33 Col. 142.)

The court finds that Smith's entry measures up to all the conditions imposed by the language quoted and through Stowe he had been diligently prosecuting the work toward a discovery for practically six weeks prior to the re-entry by defendant. Being thus in the rightful occupancy of the property he is entitled to the relief asked for by his complaint. While the plaintiff's occupancy in the form required to hold the location had only extended for a short period of time, as against the defendant, who, with its predecessors in interest, had claimed this property since 1883, yet I believe that he is entitled to the equitable relief sought, and that the defendant should be enjoined from further disturbing or interfering with his work so long as he continues to diligently prosecute the same towards discovery. A denial of this relief would at once place valu-

able property, and possibly human lives, in peril and reduce the question of possession and occupancy to a situation not unlike that described by the eminent jurist writing the opinion in Katz v. Walkinshaw, as

> "The good old rule
> Sufficeth them, the simple plan,
> That they should take who have the power,
> And they should keep who can."

Findings and judgment are ordered for plaintiff in accordance with the views herein expressed.

Dated February 14th, 1911.

ROBERT M. CLARKE, *Judge*.

272 Received copy of the within for the judge who tried the case, this 25th day of March, A. D. 1912.

J. B. McCLOSKEY, *Clerk*.

Due service of the within, and receipt of a copy hereof, is hereby admitted this 25th day of March, A. D. 1912.

THOS. O. TOLAND,
Attorneys for Appellant.

273 In the Supreme Court of the State of California.

L. A. No. 3140.

S. R. SMITH, Plaintiff and Respondent,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant and Appellant.

Appeal from Superior Court of Ventura County. Hon. Robert M. Clarke, Judge.

Opening Brief of Appellant on Submission of Case to the Court in Bank.

Thos. O. Toland, Union Oil Bldg., 7th & Spring Sts., Los Angeles, Attorney for Appellant.

Filed May 21, 1913. B. Grant Taylor, Clerk, by W. C. Van Allen, Deputy.

274 In the Supreme Court of the State of California.

S. R. SMITH, Plaintiff and Respondent,
vs.
UNION OIL COMPANY OF CALIFORNIA, a Corporation, Defendant and Appellant.

Opening Brief of Appellant on Submission of Case to the Court in Bank.

Statement of Facts.

The issue in this case arises between two oil mining claims which cover identically the same ground [Tr. fols. 88, 112].

The claim of the appellant is named the Rawley, that of the respondent the Schley, and the land affected by them is unsurveyed public land of the United States situate in Ventura county, and on or in the vicinity of Sec. 17, T. 5 N., R. 19 W., S. B. M.

275 Appellant's said claim, the Rawley, was located by citizens of the United States and monumented on the ground, and notice of location thereof posted and recorded in the local mining district in 1883, and the title thereof derived by mesne conveyances to the appellant, which is the owner thereof [Tr. fols. 112, 113, 365-366].

The Sampson, Shenandoah and Arizona claims, which adjoin the Rawley, were likewise located as early as 1877, and have been maintained and title thereof derived through mesne conveyances to the appellant, which is still the owner thereof [Tr. fols. 367-368]. The annual assessment work was done by the appellant and its predecessors in interest on the Sampson, Arizona, Rawley and other claims adjacent for every year since their location until the commencement of this suit, and affidavits of such assessment work were filed for each of said years except the year 1908. Thus the plaintiff had at all times maintained active and persistent claim to all of its properties in that locality and expended money thereon every year as stated [Tr. fols. 373-374]; and see opinion of Justice Clark in respondent's opening brief, page 14.

As early as 1889 the appellant made discovery of oil by a well sunk on the Arizona claim (adjacent to its Rawley claim on the south), which well it pumped for oil and maintained its right to said claim at all times thereafter until the commencement of this
276 action by the doing of the annual assessment work on said Arizona claim.

The Sampson claim, of which Stockholders' Oil Company is lessee and on which it was continuously engaged in 1909, and until December, 1910, in sinking a well for oil, is situated on the west of and adjoining the Rawley claim of the appellant. These two claims, the Rawley and the Sampson, are owned by the appellant; the oil-producing formation is shallower in the Sampson and deeper in the Rawley because it dips easterly at an angle downward into the Rawley [Tr. fols. 353, 357].

Adjacent both to the Rawley and to the Sampson on the south lies the Arizona claim, in which oil was discovered by the appellant in 1889, and the annual assessment work has been done thereon at all times since and the appellant's claim and right thereto has been fully maintained.

Thus all the testimony in the case, the pleadings of the parties, and the statement of facts in the opinion of Judge Clark, which is set out in respondent's reply brief, all establish beyond peradventure that the whole region about the Rawley claim, and the Rawley claim itself is "oil land" in a general sense and is chiefly valuable for the petroleum and other minerals therein contained [Tr. fol. 91], and is within the provisions of the Act of Congress of February 12, 1903
277 (Chapter 548, 32nd Stats. at Large, 825; 10 Fed. Stats. Ann. 236), which provides:

"That where oil lands are located under the provisions of Title 32, Chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: Provided, that said labor will tend to the development or to determine the oil bearing character of such contiguous claims."

The lands within the Rawley claim are therefore also within the purview of the Act of Congress of February 11, 1897 (Chapter 216, 29 Stats. at Large 526; 5 Fed. Stats. Ann. 47), which extends the placer mining law "to lands containing petroleum or other mineral oils, and chiefly valuable therefor."

Let it be noted here also that the last named Act contains this proviso:

"Provided, that lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral," etc., are within the Act.

The Rawley claim was filed upon as mineral, and was claimed as mineral prior to the enactment of the law of 1897, and thus is brought strictly within its terms, and was improved as mineral by the appellant and its lessees, Mitchell and Slocum, and its sub-
278 lessees, Reynolds and Mann, in 1909 and 1910, and prior to any possibility of a claim of the plaintiff attaching thereto; our contention being, throughout this case, that no claim of the plaintiff could possibly have attached thereto, until the incoming of Stowe in October, 1910; and we do not admit that any right of the plaintiff or Stowe was initiated by Stowe's incoming.

Moreover, the conduct of all other parties who have touched the Rawley claim since its location in 1883 and who have done any business with reference to lands in that locality, shows that the region is composed of "oil lands." The appellant's predecessors located it as such in 1883; the appellant has operated for and produced oil on the Arizona, adjacent to it, and in other places in the locality, from the Kentuck, on the Sespe, clear around the Horseshoe to these lands; the Stockholders' Oil Company has leased the Sampson claim, adjoining the Rawley on the west, and is sinking a well thereon in which oil has been discovered at two depths therein; the formation of

the country is such, and the conditions are such, that the oil-producing formation, being shallower in the Sampson and dipping to the east, and downward, dips and runs into and under the Rawley, so that the sinking of an oil well in the Sampson tends to prove the existence of the same formation, which the testimony shows dips into and under the Rewley, and thus to establish the oil-
279 bearing character of the Rawley.

Hence the Rawley and the Sampson, which are both owned by the appellant; which lie contiguous; in which the oil-bearing formation is homogeneous, dipping from the Sampson into the Rawley, constitute a group of not exceeding five claims and come within the purview of the provisions of the Act which in our former brief we have called the "Five-Claims Act," being the act above referred to, passed by Congress February 12, 1903, and found in 10 Federal Statutes Annotated, 236.

We here point out that in the year 1910 more than $2300.00 worth of actual improvement was done by appellant through its lessees and sub-lessees upon the Rawley claim before any pretense of doing work thereon is claimed by the respondent, whose very earliest claim of the doing of any act pointing to development was the work done by O. J. Stowe, commencing in October, 1910. But this expenditure and work cannot avail the respondent because:

First. All the $2300.00 worth of material then on said claim was placed thereon by appellant for the development thereof through its sub-lessees, Reynolds and Mann, responsive to the obligations of their lease.

Second. Appellant did not at any time relinquish, or to any
280 extent surrender, any right or claim which it had acquired to the Rawley claim by reason of the placing thereon by its said sub-lessees of said materials for the development of the Rawley claim.

Third. It was beyond the power of appellant's sub-lessees, Reynolds and Mann (Middle Sespe Oil Company), to deprive appellant of its right thus acquired, by selling away the materials thus placed upon said claim by them for it and through which it had gained a firmer and fuller right to the Rawley claim by the improvement thereof.

Fourth. The appellant was never notified by the respondent, or any representative of the respondent, or by Stowe who claimed to operate under the respondent, or by any person at all that Stowe was not in privity with Reynolds and Mann in going forward with improvements on said claim under their lease, begun as aforesaid in October, 1910, until after Stowe had been going forward with said improvements for a number of days;

Fifth. Although said improvements were purchased from Reynolds and Mann and thus filched away from the appellant secretly and entirely without its knowledge, yet those clandestine and unwarranted acts were known to the respondent, were connived at by him particularly through his agent, J. P. Brunton and others; so that to hold that the respondent acquired any right to said claim by
281 such method and means through Stowe as its operative, would be tantamount to allowing an already acquired and vested

right of the appellant to be taken away from it without its knowledge or consent;

Sixth. The very material which Stowe used to begin his operations was that placed on the Rawley claim by Reynolds and Mann, as sublessees of the appellant, for carrying out their obligations to the appellant under the lease; and since neither the respondent nor Stowe had placed any such materials on said land with which to operate thereon, it was first necessary that they should work a fraud against the appellant by getting those materials away from the appellant's sublessees before the respondent or any of his representatives should begin operation;

Seventh. This fraud was secretly and clandestinely effected without the appellant's knowledge or consent, but the very moment it was known to the appellant's superintendent in that field, B. B. Grinnell, which was the first information on the subject had by the appellant, directly or indirectly,—that moment the appellant took steps to carry on the development of that claim without lapse of a single instant in its diligence—ordered material, put men in the field and on the work and went to the development of said property expending
282 thereon probably $1,000.00 and continued thereon until restrained and finally permanently enjoined by the order of the court in this case;

Eighth. That in the year 1910 the appellant through its sublessees, Reynolds and Mann, and by its own expenditures in the development of said property, expended thereon in excess of $3,000.00 and has not yet relaxed in its diligence because it will be deemed to be actually diligent at all times while restrained by the injunction and order of the court.

Appellant's Points and Authorities.

Appellant contends:

I.

That appellant and its predecessors in interest had filed upon the Rawley claim, in 1883, as a mineral claim chiefly valuable for petroleum oil and has ever since claimed it as such mineral claim. That appellant was in the actual possession and occupancy of the Rawley as such mineral claim, on the dates of February 5, 1910, February 27, 1910, and October 5th, 1910, and for more than a year prior thereto, by and through its actual possession and occupancy of the Sampson claim (lying contiguous to the Rawley on the west), and was actually engaged in boring a well for oil on the said Sampson claim. That the boring of said well did and does tend to the development, or to determine the oil bearing character of the
283 said Rawley claim. That before the commencement of this suit appellant by and through its lessees had discovered oil in said well [Tr. fols. 89-93, 112, 113, 313-317, 329, 330, 333-335, 343-374, 376-378, 471-477; Opinion of Trial Court, see respondent's brief, page 14.] That at all times hereinabove mentioned appellant

was by and through the boring of said well on the Sampson claim in the possession and actively at work developing and determining the oil bearing character of the Rawley claim contiguous thereto, in full compliance with the provisions of the Act of Congress referred to in the above statement as the "Five Claims Act," passed February 12th, 1903, which is as follows:

"That where oil lands are located under the provisions of Title 32, Chapter 6, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all; Provided, that said labor will tend to the development or to determine the oil bearing character of such contiguous claims."

32 Stats. at Large, 825;
10 Fed. Stat. Ann., 236.

This act has not, up to this time, been construed by any court of last resort. While in its nature and effect it is substantive in
284 character, it is also in its effect a remedial act.

Silver v. Ladd, 7 Wall. (U. S.) 219, 225;
Stark v. Starrs, 6 Wall. (U. S.) 402;
Cutting v. Cutting, 6 Fed. 259, 266;

and must be construed liberally so as to afford all the relief within the power of the court, which the language of the act indicates that Congress intended to grant.

Beley v. Naphtaly, 169 U. S. 353, 359;
Jones v. Guaranty Co., 101 U. S. 622, 626;
White v. The Mary Ann, 6 Cal. 462, 471.

The intention in remedial statutes is liberally inferred and to a greater extent dominates the letter of the provision.

In re Matthews, 109 Fed. 603, 617.

It is not unusual to extend the enacting words of a remedial statute beyond their literal import and effect, in order to include cases within the same mischief.

Dubois v. Hepburn, 10 Pet. (U. S.) 1, 22;
U. S. v. Hogg, 111 Fed. 292, 294;
Singer Company v. McCullock, 24 Fed. 667, 668.

In the construction of statutes for the purpose of ascertain-
285 ing the legislative intent, regard is to be had not so much to the exact phraseology in which that intent has been expressed, as to the general tenor and scope of the entire legislative scheme embodied in the statute.

Polache v. Pac. Ins. Co., 42 Cal. 418, 430;
Simmerton v. Monterey Co., 76 Cal. 113, 116;
Gray v. Windsor, 77 Cal. 525, 527;
Murphy v. San Luis Obispo, 119 Cal. 624, 628.

In determining the intention and purpose of Congress in passing the "Five Claims Act" it will be necessary to consider the meaning and use of certain terms employed in said Act as applied to locations, and to consider, also, the matter of annual assessment labor upon placer mining claims.

The Terms Claim and Location.

"Independent of Acts of Congress providing a mode for the acquisition of title to the mineral lands of the United States, the term 'mining claim' has always been applied to a portion of such lands to which the right of exclusive possession and enjoyment, by a private person or persons, has been asserted by actual occupation, or by compliance with local mining laws, or rules, usages, or customs."

Williams v. Santa Clara Min. Assoc., 66 Cal. 193, 198, 5 Pac. 85.

286 "'Location' equivalent. The terms 'mining claim' and 'location' are in one sense identical, and may be used indiscriminately to indicate the same thing. Thus the location, which is the act of taking the parcel of mineral land, became, among miners, synonymous with the mining claim originally appropriated, and so if the miner has only the ground covered by one location his mining claim and location are identical and the two designations may be indiscriminately used to denote the same thing."

Del Monte Min. etc. Co. v. Last Chance etc. Co., 171 U. S. 55, 74, 18 S. Ct. 895, 43 L. Ed. 72;

St. Louis Smelting Co. v. Kemp, 104 U. S. 636, 649, 26 L. Ed. 875.

"Mining claims are claims asserted under the mining laws of the United States to certain lands of the government supposed to contain mineral deposits."

Salisbury v. Lane (Idaho), 63 Pac. 382, 384.

An eighty-acre tract of land in process of development as an oil mine is a mining claim within the meaning of the lien law, regardless of whether oil has been discovered therein or not.

Berentz v. Belmont Oil Mining Co., 148 Cal. 577, 582.

"In mining, the word 'location' sometimes means the lode or placer ground actually located. This is called the 'miner's location.'
287 Sometimes it is used to mean the act of appropriating, taking up or claiming the lode or placer claim. These are styled acts of 'location.' In the abstract the term 'mining claim' and 'location' are synonymous. But in the concrete the term 'mining claim' may indicate one or more locations, and when several locations are grouped and operated as one claim the aggregation is still called a 'mining claim.'"

20 A. & E. Encyc. Law (2nd Ed.) 704.

"The word 'mining claim' as used in the law has no reference to the different stages in the acquisition of a government title.

"In our opinion it includes all mines, whether the title is inchoate, as in the case of a mining claim in its strictest sense, or perfect, as in the case of a fee simple title."

Bewick v. Muir, 83 Cal. 368, 372.

The word "claim" as applied in mining may mean a number of locations contiguous to each other owned by one person or corporation, regardless of date or dates of location.

Lindley on Mines (2nd Ed.), Sec. 327.

It is our contention that the term "locate," as used in the "Five Claims Act" means defining the position and boundaries, and doing such acts as indicate and publish the intention to occupy and hold a parcel of public land as "oil land" under the license of the United States mining statutes.

288 Comparative Growth of the Mining Law.

There have been comparatively few material changes, since 1866, in the location of lode claims, which, except in certain sections, contain a fraction more than twenty acres each. Each location must have a separate discovery and location notice and the boundaries of each must be well defined. As to the number in one group there is no limit. The annual assessment labor may be done either upon each claim separately, upon one claim of a group, or even off of the located area entirely, but wherever done there must be $100.00 worth of labor for each claim represented.

A tunnel site may be located for the purpose of boring a tunnel to develop lode claims already located or to prospect for blind lodes. The law of assessment labor does not apply to a tunnel site location, and a discovery is not essential to its validity. The law requires but reasonable diligence in prosecuting work upon a tunnel site location in order to protect the claimant's rights to blind lodes, and when such lodes are discovered, discovery dates back to date of the tunnel site location.

Uinta Tunnel Co. v. Creede & C. C. M. Co., 196 U. S., 337, 343, 355.

Placer claims may be either of twenty acres by one individual or a maximum of 160 acres by an association of eight in-
289 dividuals. It was formerly held that in order to perfect a placer location of 160 acres, a discovery should be made upon each 20 acres thereof.

S. P. Co. v. Griffin et al., 20 L. D., 485, 487;
Rhodes v. Treas., 21 L. D., 502, 503;
Louise M'g Co., 22 L. D., 663, 665.

Now one discovery within the boundaries of a 160-acre claim is sufficient.

Union Oil Co. (on review), 25 L. D., 351;
Reins v. Raunheim, 28 L. D., 526;
Merced Oil Company v. Patterson, 162 Cal., 358, 364.

The principle has become axiomatic that development by working is the condition upon which the government allows the miner to hold his possessory title until patented.

Co. Rep. M. Co. v. Lebanon M. Co. (Colo.), 12 P., 212, 213;
O'Reilly v. Campbell, 116 U. S., 418, 422.

By reason of the original requirement for discovery in lode claims and by unwarranted analogy drawn between placer claims and lode claims, and on account of the case of discovery of mineral both in lode and gold placer claims in the early history of mining in
290 California, and the west, it came to be the holding of the courts that possession of placer claims could not be maintained except when based upon discovery, and further the idea appeared in the decisions (as we believe without any basis in any provision of statute mining law), that assessment work could not avail anything except when performed upon a claim in which there had already been made a discovery of mineral.

It came to be the understanding, first firmly impressed upon the legal profession by the case of Miller v. Chrisman, 140 Cal., 440, that discovery was essential to a perfect placer claim.

The extension of the placer mining law to oil lands by the Act of February 11, 1897 (5th Federal Stats. Ann. 47), and the difficulty and great expense attendant upon the sinking of wells to make discovery of oil in oil lands, and the intimation in Miller v. Chrisman, 140 Cal., 440, that the only way that discovery of oil can be made in oil lands is by the sinking of wells, made it evident to those engaged in that business that the application of this extreme doctrine that no person could maintain a claim to oil lands by the doing of annual assessment work thereon, unless he had first made a discovery of oil thereon, was in fact a very great burden upon the oil miner. The great growth of the oil business prior to the year 1903, particularly in California, where the doctrines settled
291 by the case of Miller v. Chrisman were best understood, made the existence of this burden very evident; and in consequence the matter was brought to the attention of congress and the result was the enactment of the "Five Claims Act" of February, 1903, to relax the burden of this stringent rule, and placing the oil miner upon an equality with tunnel miners and other miners who are permitted to do their annual assessment work upon one claim for the benefit of not only five claims, but any number of contiguous claims, so situated that development work upon one thereof will be for the benefit of all thereof.

We contend that it was the purpose of this act to encourage the oil miner to go out upon lands recognized as oil lands, locate his five claims by posting his notices, by setting his monuments and by

recording his notices, and thereby becomeentitled to sink a well upon one of those claims without starting in upon the others, and to be allowed to appiy the $500,00 work of work upon that one claim for the benefit of his five claims, provided, that there is but one ownership of the five claims and that they are so situated that the sinking of the well upon one will tend to develop the minerals in, or to prove the oil bearing character of the remaining claims of his group; and this right would be of no use to him if it were necessary in order that he might have the benefit of the Five Claims Act that
292 he should first make discovery of oil upon each of his claims before he would be allowed to do the work upon one for all.

In short, it is our contention that it was the purpose of the "Five Claims Act" to permit and encourage the application of the funds necessary to do the assessment work upon five claims under the rule which requires at least $100 per year for each claim, in one place, upon one claim, in order that an efficient and valuable result could thereby be obtained by the doing of labor in that one place which "will tend to the development or to determine the oil bearing character of such contiguous claims."

In our opinion, if discovery shall already have been made upon any one of the contiguous claims there is no need of remedial, or other, legislation of the "Five Claims Act" kind, allowing the doing of work which "will tend to determine its oil bearing character," because such antecedent discovery will already have established that character of the land.

Thus the clear effect of this act was intended to be that of so changing the rule in regard to annual assessment work, that it would, in the case of oil claims so located and situated and owned, be no longer necessary that they should meet the rule which has been established by judicial decision (so far as placer mining claims are concerned) that such annual assessment work should be
293 done and could be effectively done only upon or for the benefit of claims upon which discovery shall previously have been made, and furnish statutory authority and right for a practice, in the case of such oil claims, of applying, to the limited extent of five claims only, such annual assessment work upon any one claim for the benefit of, and to enable the owner to continue to have the right of possession of and to hold, all of the group, regardless of whether oil shall have been previously discovered on any one of said group of five claims or not.

From the earliest period of mining in the west, the locator of mining claims of all classes was required to perform a certain amount of labor, or expend a certain amount of money in betterments and improvements upon, or for the benefit of his located claims, as a condition upon which he might continue in the possession and enjoyment of the mining ground appropriated by him to the exclusion of others. A failure to perform the necessary work required by the local rules or customs

amounted to an abandonment of the claim and thereupon it might be occupied and appropriated by another.

Depuy v. Williams, 26 Cal., 310, 314;
Kramer v. Settle, 1 Idaho, 485, 492;
Con. R. M. Co. v. Lebanon M. Co., 9 Colo., 343;
294 Jamison v. Kirk, 98 U. S. 453, 459 et seq.;
St. John v. Kidd, 26 Cal. 264, 272.

This development work was called by miners "assessment work," and the performance of it a representation of the mine; that is, when the work had been performed for a given period, the claim was represented for that period.

Lindley on Mines (2nd Ed.), Sec. 623.

The Act of May 10, 1872, made provisions for the performance of work annually on all claims theretofore or thereafter located.

Lindley on Mines (2nd Ed.), 623 et seq.

The purpose of the statute was to require every person who asserted an exclusive right to his claim to expend something of labor or value on it as evidence of his good faith.

Chambers v. Harrington, 111 U. S. 350, 353;
McCulloch v. Murphy, 125 Fed. 147, 149.

It has been laid down in decided cases that work done for the purpose of discovering mineral or for the purpose of prospecting or developing the ground or claim, may be considered as assessment work.

U. S. v. Iron S. M. Co., 24 Fed. 568;
Book v. Justice M. Co., 58 Fed. 106.

295 It is the unqualified opinion of Judge Morrison in his work on mining rights that there is no authority in any of the mining statutes for the extension of the rule requiring annual assessment work upon placer claims.

On this subject he has stated himself as follows:

"The question of annual labor on placers is a curious instance of the growth of law by following the first judicial oversight as a precedent until the wrong interpretation is firmly rooted as the true one. By no fair construction of the Act of 1872 could it be applied to anything except lode claims. The very amount of labor was fixed by the number of feet in length along the vein. But in 1876, in Chapman v. Toy Long, 4 Sawy. 28, 1 M. R. 497, placers were referred to incidentally as subject to the labor law. In Jackson v. Roby, 109 U. S. 440, without argument, the same dictum was expressed. Later in Carney v. Arizona Co., 65 Cal. 40, 2 P. 734, the point was definitely made as to whether such labor was required on placers, and the Supreme Court of California, basing their opinion on the force of the general terms of Sec. 2329,—a section enacted two years prior to the annual labor section,—sustain the affirmative of the proposition. In Sweet v. Webber, 7 Colo.

443, 4 P. 752, the precedent thus established was followed without reference to the original statute. Morgan v. Tillotson, 73 Cal. 520, 15 Pac. 88."

Morrison's Mining Rights (14th Ed.), 134.

296 Thus the law of assessment labor was applied to placer claims.

The earlier decisions were to the effect that assessment work upon placers was required upon each 20-acre claim; now $100.00 worth of work is sufficient to hold a 160-acre claim and $500.00 to patent it.

Merced Oil Co. v. Patterson, 162 Cal. 360.

It was also formerly held that assessment work upon a placer location must be done within the boundaries of the claim. Such is not now required.

"As water is essential to the development and working of placers, expenditures made in constructing ditches, flumes and pipe lines for the purpose of conducting water to the property will undoubtedly satisfy the law."

Lindley on Mines (2nd Ed.), p. 1174.

"Where a placer claim or group of claims held in common contain deposits of such character and extent that they can be most economically worked by means of a mining dredge and the owner of such claim or group has in good faith purchased and actually placed in good working order thereon a dredge, for the exclusive purpose of working such deposits, which dredge has not heretofore been used as the basis for patent for any other area, it is entitled to be regarded as a mining improvement, so far as that particular claim or group is concerned and to have its cost accredited
297 thereto."

Gordon Gulch Bar Placer, 38 L. D. 28, 32.

In the case of oil placers we have what might be termed a composite of other mining claims. They are termed placers because they contain mineral "not in place," not fixed in rock. Still, it is well known that the natural habitat of this class of mineral, except in rare cases, is in stratified formations frequently great distances below the surface and it requires enormous expenditure and immense development in the nature of actual well boring and hazardous prospecting to determine the nature, extent and permanency of the deposit. In this respect, the deposit is very similar to blind lodes, which formed the basis of our tunnel site laws, and the location should thus be treated with the same leniency as tunnel site locations, and hence the enactment of the "Five Claims Act."

In the case of lodes or ordinary placer locations a discovery may be made with little or no expense. In oil placers, a discovery is seldom made except at the end of enormous expenditures of time and money.

Mr. Justice Henshaw, in the case of McLemore v. Ex. Oil Co., 158 Cal. 564, says:

"When congress enacted that locations could and should
298 be made of public lands containing petroleum or other mineral oils under the laws relating to placer mining claims (Act Feb. 11, 1897, 29 Stats. at Large, Ch. 216, p. 526 [U. S. Comp. Stats. 1901, p. 1435]), the courts were at once confronted with serious difficulty in their endeavor to obey the congressional mandate, and fit the placer mining laws to the exigencies of oil locations, which, in their nature, were radically dissimilar. Thus it is well established, that the sole power of disposition and control of the public lands being vested by the Constitution of the United States in Congress (Const. U. S., Art. IV, Sec. 3), congress could at any time change its policy in regard to those lands so long as vested rights were not impaired. It was fully established also that a qualified person, who had made a valid location on a part of the public mineral domain (which valid location always included discovery), acquired vested rights which no change in congressional policy could affect or impair, but per contra, that a change in policy could impair the rights of one upon the public domain who had not acquired a valid location. As has been said, in the case of other minerals, discovery preceded the demarkation of the boundaries, the posting and recording of the notice. In the case of oil discovery, in the very nature of things, would rarely or never be made except at the end of much time and after the expenditure of much money, the discovery of oil involving the erection of a derrick, the installation of machinery and the laborious drilling of a well, frequently to a depth of three thousand feet or more. If, therefore, the placer mining laws, which were declared by congress
to be the only laws under which oil locations could be estab-
299 lished, were to be made of any practical benefit to the oil locator, it must be by permitting him to mark the boundaries of his location and post and record his notice, and by protecting him in possession while he was with diligence prosecuting the labor of digging his well to determine whether or not a discovery could be made."

The Five Claims Act was not called to the court's attention while it was considering the above case.

Recognizing the above, or a like good sense and reasoning, congress, in 1903, by virtue of the authority in it vested by the Constitution of the United States, passed the aforesaid "Five Claims Act," which is the first and only act of congress dealing directly with work on placer mining claims, and is by its terms pointed specially to oil placers, and recognizes the difference between the mode of occurrence of oil and other minerals and the difference between the laws governing other minerals, and those requisite for the encouragement and protection of the oil miner.

It seems clear that such a discovery of oil as this court has defined a discovery to be, within the boundaries of a claim, tends more to determine the oil bearing character of that particular location than to any contiguous location, and the assessment work would be but

a matter of pumping oil. The expense of such a discovery
300 is, without exception, very great. What then was the intention of congress in passing this act? It seems, to clearly place the expense of oil locations upon an equal footing with other mineral locations, and to enable the locator to hold five claims under the work and expense attached to one discovery; provided, that the conditions were such that the work and discovery could be done upon one or five or fewer contiguous locations, where it would tend to the development or to determine the oil bearing character of such contiguous locations.

Therefore, we contend that the most reasonable interpretation of the "Five Claims Act" is that made by the appellant, to-wit:

That the term "mining claim" as used in said act is used in the abstract and is synonymous with "location."

Clearly the term, "annual assessment labor," used in said act in regard to oil placer claims, is not used in the same general sense as that term has heretofore been construed to have, but applies to work upon unperfected as well as perfected oil locations.

The evident great purpose of the act was to eliminate the expense of separate discovery work simultaneously upon five contiguous locations, by making and centralizing the work upon one, when, by the work upon that one, the oil bearing character of the other claims of the group could be effectively determined,
301 without the great waste and expense incident to the sinking of prospect wells upon each claim of the group all at one time,—an unreasonable requirement.

The well being bored upon the "Sampson" claim, by the appellant, tends to develop, or at least to determine, the oil bearing character of the contiguous "Rawley" location, and is in full compliance with said act, and the effect of protecting the appellant in its claim to the Rawley claim as long as continued in compliance with the requirements of the act.

This, we believe, is not only the meaning intended by congress, but it is the meaning most consonant with sound reason. It is a construction which promotes the very purpose which congress had in view.

We direct attention to the salient features of the Five Claims Act:

1. First, to this language of the act:

"That where oil lands are located, * * * as placer mining claims," etc.

In this language is contained the fundamental conditions for the operation of the act.

It is not the effect of this provision merely that oil claims in a group of five may have the annual assessment work done upon one for the benefit of the group. In short, the unit of the group, under this act, is not an oil claim. If such were the language of
302 the act it might be essential that before the act would operate upon a claim, there should be a discovery of oil so as to make a perfected oil claim.

On the contrary, the unit of the group contemplated by this act is "oil land * * * located as placer mining claim." Such an unit

would not necessarily be a perfected claim and, in view of the subsequent language of the act, to imply that it would be a perfected claim, with discovery thereon, before the act could be applicable, would be to import something into the act which is not contained in its terms.

We submit that the full import of this language is, that the lands shall be oil lands only in the sense in which they are pleaded in the respondent's complaints and in the appellant's amended answer in this action, to be oil lands; that is, they are lands adjacent to lands which are demonstrated to be oil lands; they are lands which are generally recognized to be oil lands; they are lands in the vicinity of which are outcroppings and evidence of those geological formations which are oil bearing in their character and so situated that those who are familiar with that department of geology are able to say, as business men, that the probability is, that if wells shall be sunk in such lands, oil may, as a good business venture, be produced therefrom.

The word "located," in our opinion and in the light of
303 the authorities which we have heretofore cited, in this act means simply delimited by having the boundaries ascertained and monumented on the ground, identified by having a notice of the location posted upon the land, and further claimed to the public by having such notice of location recorded in the manner customary under the rules for recording mining claims.

The form of language, "oil lands located as placer mining claims," does not under either the very arrangement or the import of its terms import that the perfected mining claim is the unit upon which the act is intended to operate.

Located as a placer mining claim means merely, located after the fashion of a placer mining claim. In short, it is contemplated by this act that the general subject matter in the way of mineral land to be exploited with reference to the provisions of this act is oil land. That it shall be located, that is, marked out and notified to the public in the customary ways as being claimed as oil lands, and that all of this shall be done after the manner of the location of placer mining ground as distinct from lode claims. And when these things concur with the other conditions which are made precedent by the act to the applicability of the act to any given case, then the unit upon which the act will operate is present, whether there shall have
304 been discovery of oil in any of the five or smaller number of claims of the group, or not.

It has been long recognized by the decisions, commencing particularly with the case of Miller v. Chrisman, 140 Cal. 440, that the order in which the several things necessary to be done to effect the location of a perfected oil claim shall happen, is immaterial, provided that they finally concur. That is to say, it makes no difference whether the claim shall first have its lines run and be monumented and then have the notice posted upon the ground and then recorded and then discovery made, or whether these acts shall actually take place in any one of the various other orders in which

they may arrange themselves, it being only essential in the end that all of the things essential in the given case shall concur.

Moreover, it has been long recognized, particularly under the decisions in California, commencing with Miller v. Chrisman, that a claim so located, whether discovery shall have been made thereon or not, is property and the subject of conveyance and the passing of rights therein from one owner to another.

Moreover, it has been established by the courts, particularly the Supreme Court of California, as a doctrine of absolute necessity, prior to the existence of any statutory enactment upon the
305 subject, that owing to the peculiar conditions under which oil occurs in nature, and owing to the enormous expenditure of time and money and the great hazard incident to the discovery and production of it, particularly in unexplored fields, possession accompanied by the tools and machinery appropriate for the development of an oil claim and actual operation therewith on such oil claim, will entitle the operator to hold the same to the extent of his located, or delimited, boundaries, even prior to the discovery of oil therein.

It is our understanding that this doctrine has been held as one of necessity and without any express authority contained in any act of congress or state statute upon the subject.

As we have contended elsewhere in this case, the question before the court is not one of precedent wherein the court will be bound or hampered by any previous decisions. It is purely and simply a question of statutory interpretation, having in mind all the time the pre-existing law, the nature and great diversity of the subject matter to which the mining laws of the United States are applicable, the mode of occurrence of petroleum oil as a mineral in nature, the purposes of the act, and the language adopted in and by the terms of the act for effectuating its purposes.

2. Second, we call attention to the condition contained in
306 the proviso of the "Five Claims Act" that the assessment "labor will tend to the development or to determine the oil bearing character of such contiguous claims.

(*a*) By the very terms of this provision, it is made necessary that the work shall be such as to amount to the actual development of the contiguous claims. If it will tend to the development of the contiguous claims, it is sufficient to meet the requirements of this language.

It is well known that oil, being liquid, has been said to be "fugitive" in its character; so that a well sunk near the line of a given oil claim will draw oil from such adjacent claim. These facts were no doubt in the mind of those who drafted and enacted this law. Two or more claims may be actually developed by the sinking of a well upon one thereof, if their areas converge to a common point. Hence it is the provision that this act will be applicable if the conditions are such that assessment labor done upon one claim will tend to the development of adjacent claims.

(*b*) On the other hand, a well sunk upon one of a group of claims may, with perfect certainty, reach an oil producing formation

therein which, with equal certainty, dips and goes through the other contiguous claims in the group, but yet be in such portion of the claim on which it is sunk as to be so remote from the other contiguous claims of the group that it could not be safely predi-
307 cated of it, or established by any proof which would be deemed competent and sufficient for the purpose, that it would either develop or tend to develop any others of the contiguous group of claims. This ever recurring condition in the oil fields was also evidently in the minds of those who drafted and enacted this law, because the act provides that if such assessment "labor will tend to determine the oil bearing character of such contiguous claims," it will be applicable as assessment work upon all of the claims of the group, for all of the purposes of the act.

Thus it is not necessary that a well sunk by such assessment labor adjacent to the line should, or shall, actually determine the oil bearing character of the contiguous claim, although it might well do so; and it is frequently a deduction of such unmistakable certainty as to amount to a demonstration, and as that it has been recognized in recent decisions of the Land Department of the United States government, that a well sunk adjacent to the line of a claim may at once not only prove the mineral character of the contiguous claims, but amount to a discovery of oil therein and be recognized as such even for the purposes of application for patent.

But the language of the act goes much further even than is here stated. It is, that annual assessment labor, done upon one of
308 a group of claims, shall be applicable for the purpose of holding the claims, if it "will tend to determine the oil bearing character of such claims." That is to say, if the conditions of the contiguous group of claims are such that it can be predicated on the discovery of an oil bearing formation in one claim of the group, by the driving of a well thereinto on such claim, that such oil bearing formation extends into the other contiguous claims, then such assessment work will hold all of the group for the owner whether discovery shall have been made on any thereof or not.

3. As heretofore contended, it is utterly repugnant to the fundamental provisions of the act to contend, and certainly to hold, that in order that assessment labor may be applicable to a group of five claims, or less, under the provisions of this act, there must have been a discovery upon any claim of the group.

There is certainly no provision that even in the remotest degree tends to a holding, or conclusion, that there shall ever have been a discovery upon that one of the group upon which the work in being done. It is the very assumption in the act that that claim shall be protected because of the cumulative amount of work for all the claims of the group being done upon it; and it is certainly the very import of the language of the proviso that, if the doing of
309 this assessment work under this act on one of the claims of the group will tend to determine the oil bearing character of the contiguous claims of the group, such oil bearing character will not need theretofore have been determined or known either by antecedent discovery of oil in the technical sense, or otherwise.

We submit that the judgment and the order denying defendant's motion for a new trial should be reversed.

Respectfully submitted,

THOS. O. TOLAND,
Attorney for Appellant.

Dated May 21, 1913.

310 In the Supreme Court of the State of California.

L. A. No. 3140.

S. R. SMITH, Respondent,
v.
UNION OIL COMPANY OF CALIFORNIA, Appellant.

Affidavit of Service of Brief.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Thomas O. Toland, being first duly sworn, says: That he is the attorney of record for the appellant in the above entitled court and cause; that Alton M. Cates is the attorney of record for the respondent above named. That this affiant resides and has his office in the city of Los Angeles in said county; that said Cates has his office at 518 Bradbury Building, corner of Third street and Broadway in said city, that this affiant does not know, and after diligent inquiry has been unable to ascertain the place of residence of said Cates. That on this 21st day of May, 1913, this affiant desired to serve the annexed brief, being appellant's opening brief, on the submission of the above entitled cause to the Supreme Court en bank, and has been unable to find said Cates to make personal service upon him; that he visited said Cates' office; that he was not there, neither was there any person there in charge thereof. That therefore this affiant made service of said brief upon said Cates by depositing a copy thereof in the post-office at Los Angeles, California, postage prepaid, addressed to him at his said office, and also placed a copy of said brief in said office of said Cates.

[SEAL.] THOMAS O. TOLAND.

Subscribed and sworn to before me, this 21st day of May, 1913.

LEO LONGLEY,
Notary Public in and for Los Angeles County, California.

311 Mailed copy of within Brief *postal* prepaid to John B. McCloskey, County Clerk of Ventura County, Ventura, Cal., this May 21st, 1913.

THOS. O. TOLAND,
Att'y for Appellant.

Received copy of the within for the judge who tried the case this — day of May, A. D. 1913.

J. B. McCLOSKEY, *Clerk*,
By —— ——, *Deputy*.

Due service of the within, and receipt of a copy hereof, is hereby admitted this — day of May, A. D. 1913.

——— ———,
Attorney for Respondent.

312 Filed Sep. 29, 1913. B. Grant Taylor, Clerk. —— Erb, Deputy.

In the Supreme Court of the State of California. Bank.

L. A. No. 3140.

S. R. SMITH, Plaintiff and Respondent,

vs.

UNION OIL COMPANY, Defendant and Appellant.

In this action the plaintiff and defendant make adverse claims to a certain parcel of land, each asserting a right of possession thereto as an oil land mineral location, under the acts of congress providing for the disposition of the mineral lands belonging to the United States. The parcel is in the shape of a parallelogram, one mile from north to south and one fourth of a mile from east to west, and contains 160 acres. The plaintiff in his location calls it the "Schley" claim; the defendant located it as the "Rawley" claim. The court below gave judgment for plaintiff. The defendant appeals from said judgment and also from an order denying its motion for a new trial.

The plaintiff and seven other qualified persons posted the location notice, under which he claims, on the ground on February 5, 1910, the same being then unoccupied, and on the same day marked the boundaries by sufficient monuments. The location notice, which named the ground the "Schley" claim, was duly recorded in the county recorder's office and thereafter on March 8, 1910, the said seven other persons conveyed to Smith their interest in said land. Immediately upon marking the ground the locators took possession, and, with the exception of the period from August 31 to October 7, 1910, during which it was vacant, the ground has ever since been occupied, at first by the eight associates, and thereafter by the
313 plaintiff and a lessee under him. On October 7, 1910, the lessee of plaintiff took possession and began work thereon preparatory for the drilling of a well thereon for the purpose of finding oil therein, which work he has diligently prosecuted. At the date of the beginning of this action, November 25, 1910, he had expended some $2,000, in said work. The action is, in form, an action under section 738, C. C. P., to determine adverse claims. If a qualified person peaceably enters upon public lands of the United States for the

purpose of discovering oil or other valuable mineral deposits therein, and such land is at the time unoccupied and there is at the time no valid mineral location or lawful entry thereon, under the land laws of the United States, such person has the right to continue in possession so long as he continues to occupy the same to the exclusion of others, and diligently and in good faith prosecutes thereon the work of endeavoring to discover such mineral therein. (Miller v. Chrisman, 140 Cal. 447; McLemore v. Express Oil Co., 158 Cal. 562; Weed v. Snook, 144 Cal. 443; Merced etc. Co. v. Patterson, 153 Cal. 625; S. C. 162 Cal. 661.) Hence, upon the facts stated, taken alone, the plaintiff would be entitled to maintain his possession.

The defendant claims the right of possession under a mineral land location of the same ground made by one Richard Gird and seven associates on March 5, 1883, designating it the "Rawley" claim. This location was regularly made and the ground was properly marked. By mesne conveyances the right and title of said locators became and now is vested in the defendant. No discovery of oil or other minerals has ever been made on such claim by either claimant, or at all. At the time the plaintiff located the ground as the Schley claim the defendant, although not then actually occupying this ground, was in the actual occupation of a contiguous claim of 160 acres, known as the Sampson claim, upon which it was then and still is diligently drilling a well for the discovery of oil. This well is about 1,000 feet west of the west line of the Rawley-Schley claim. It has expended several thousand dollars in this work. In-
314 cluding the Rawley claim, the defendant claims the right of possession of five contiguous claims, namely, the Shenandoah, adjoining the north half of the Rawley on the west, the Sampson, adjoining the south half of the Rawley on the west, the Baltimore, adjoining the south end of the Rawley, and the Arizona, lying next west of the Baltimore and south of the Sampson. All these it held under locations regularly made in all respects save discovery. No discovery of oil had been made except on the Arizona, in which a well was bored and oil discovered in the year 1900. Evidence was given on the trial to the effect that the land embraced in these five claims showed indications of the presence of oil beneath the surface, and that the geological formation was such that the sinking of a well on the Sampson claim 1000 feet west of the Rawley line would "tend to determine the oil bearing character of" the Rawley claim. By reason of these facts the defendant claims the exclusive right to the disputed territory, under the act of Congress of February 12, 1903, known as "The Five Claims Act." This act, including the title, is as follows:

"An act defining what shall constitute and providing for assessments on oil mining claims.

"Be it enacted, etc. That where oil lands are located under the provisions of Title Thirty-Two, Chapter Six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous, and owned by the same person or corporation, not exceeding five claims in all; Provided, That said labor will tend to

the development or to determine the oil bearing character of such contiguous claims."

The contention of the defendant is that under this act one who has acquired the possessory rights of locators before discovery to five contiguous claims taken up as oil bearing lands, may preserve and maintain his inchoate right to each and all of them, without actual occupation of all, by means of a continuous actual occupation of
315 one, coupled with the diligent prosecution in good faith of the work of discovery thereon, provided such work will also tend to determine the oil bearing character of the other claims, or of the particular one which may be in dispute. For the reasons about to be stated, we have concluded that the act should not be thus construed.

Certain pre-existing provisions of the federal mining laws bear upon the proposition. Section 2320, of the United States Revised Statutes, provides that "no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located." The word "location," as here used, evidently means and includes the posting of a notice and the recording thereof, when required, and the marking of the boundaries, as required by section 2324. Section 2320, on its face, applies only to claims for veins or lodes situated in rock in place, but by section 2329, it and all other provisions for the entry, location and patent of vein or lode claims are made applicable also to placer mine claims. Oil lands are to be taken up as placer claims. (29 U. S. Stats., 526). By the strict letter of the above passage from section 2320, it would appear that no one could maintain possession of a mining claim until he had discovered the mineral within its limits. It is true that in order to mantain his right of possession under the mining laws against another who has entered to make a mineral location in his absence, the claimant must prove a previous discovery as well as the previous marking of his lines. (Miller v. Chrisman, supra; Uinta Co. v. Creede etc. Co. 196 U. S. 353.) But the act of February 27, 1865, now section 910 of the Revised Statutes, had declared that in possessory actions for public lands between persons not entitled thereto under the United States laws, the law of possession should govern, without regard to the paramount title of the United States. Accordingly, as before stated, it has been held that before a discovery an actual occupant diligently engaged in the work of discovery has the better
316 right. But after discovery and location, continuous actual occupation was not required by any statute, in order to preserve the paramount legal right. In the course of years it transpired that, after discovery and complete location had been made, one person or corporation would acquire several such claims and allow them to lie idle and undeveloped. This was against the policy of the law, which was to encourage the working of mines and the extraction of precious metals therefrom. To prevent this it was provided in section 5 of the act of May 10, 1872 (17 U. S. Stats. 91), now section 2324 of the Revised Statutes, that "on each claim located * * * and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during

each year." If several claims were held by one person, or in common, work to the amount necessary to hold all of them could be done upon one, provided it tended to develop or benefit all the claims for mining purposes and was done in good faith. (De Noon v. Morrison, 83 Cal. 165; Big Three etc. Co. v. Hamilton, 157 Cal. 135.)

It will be observed that neither the phrase, "annual assessment labor," nor the word, "assessment," is used in section 2324. The annual work or improvement therein required is, however, referred to as "annual assessments," and the year during which it is to be done as the "assessment year" in the act of July 2, 1898, and in the title thereto the work is designated "assessment work." (30 U. S. Stats. 651.) It is also referred to as "the annual assessment" in the act of November 3, 1893. (28 U. S. Stats. 6.) And long before the passage of these acts the phrases "assessment work," and "annual assessment," were in common use among miners, and in the decisions of the state and federal courts on mining law, to designate the annual labor required by section 2324. The word, "assessment," when used in connection with the right to a mining claim, was universally understood to mean the annual labor required by that section in order to hold the right to the possession of a mining claim after a
317 discovery and complete location had been made. (1 Snyder on Mines, sec. 475.) It had acquired this technical meaning in mining law. It was never used or understood to indicate work done to make a discovery on a claim where none had been made. It was applied only to work done to hold a claim after discovery, work that had no necessary relation to a discovery, although, of course, such work might lead to further or more comprehensive discoveries.

This being the settled and uniform meaning of the word or phrase in that connection, it follows that the phrase "annual assessment labor," found in the act of 1903 under consideration, can not be construed to include or refer to work done upon a claim to accomplish a discovery thereon in order to perfect the location. The use of that phrase limits the application of the act to claims upon which discovery has been made, claims upon which there has been a valid and completed location.

The defendant insists that the act must receive a construction favorable to it on this point, because of the clause in the proviso declaring that labor on one claim will be sufficient to preserve the right to the contiguous claim, if it will tend to determine its "oil bearing character." There is some force in the suggestion that if the act relates only to perfected claims, that is, to those upon which a discovery has already been made, and seeks to provide only for the maintenance of the conditional right of possession already acquired thereby, this clause would be unnecessary. If a discovery had previously been made upon the unoccupied contiguous claim this "oil bearing character" would be, to some extent at least, already determined. But the fact that some of its terms are inapt or susceptible of two interpretations does not authorize the court to enlarge the plain meaning and effect of the act, where the words bear a reasonable meaning leaving them in harmony with the act as a whole. There might be a discovery sufficient to perfect the location,

while at the same time it would be very desirable and tend greatly to enhance the value of the claim if further exploration and
318 further discoveries were made. Deeper drilling might discover additional strata of oil bearing sand, for example, and such discovery on one claim might satisfactorily establish their existence under all of them. If so, it would tend to determine the oil bearing character of the contiguous claims, although wholly unnecessary to perfect the locations. The effect of the act in a case of this character would be to make such additional exploration on one of the contiguous claims suffice as the annual assessment labor upon all of them. The act is therefore not inoperative or absurd, even if the phrase is given its well established meaning to indicate the annual work required after discovery. Possibly the congress had a different intent, but if so it does not appear from its language. Where the words of a statute are not ambiguous and their effect is not absurd, the court cannot give it other than its plain meaning, although it may appear probable that a different object was in the mind of the legislature. (Eureka v. Diaz, 89 Cal. 469).

Some minor points made by the appellant may be briefly disposed of. No finding was necessary upon the allegation in the answer that the work on the Sampson claim would tend to determine the oil bearing character of the Rawley-Schley claim. Our conclusion as to the effect of the act of congress makes this fact immaterial, under the circumstances of this case. There was no error in refusing to permit the defendant to prove admissions of Brunton made at a time when he was not in the actual service of the plaintiff. He was not a general agent, but one employed for a special and temporary service. Therefore he had no authority to make admissions binding on Smith, except while actually engaged in service and within the scope thereof. It does not appear that the court refused to permit proof of his admissions made while actually engaged in said service. The other rulings mentioned in the briefs were not of sufficient importance to merit discussion. We find no error.

The judgment and order are affirmed.

SHAW, *J.*

We concur:
ANGELLOTTI, *J.*
LORIGAN, *J.*
MELVIN, *J.*
SLOSS, *J.*
HENSHAW, *J.*

319 [Endorsed:] L. A. No. 3140. In the Supreme Court of the State of California. S. R. Smith, Plaintiff & Respondent, vs. Union Oil Company, Defendant & Appellant.

320 In the Supreme Court of the State of California, Los Angeles. Bank.

No. 3140.

S. R. SMITH, Pl'tff & Resp.,
vs.
UNION OIL COMPANY OF CALIFORNIA (a Corp.), Def't & App't.

On Appeal from the Superior Court in and for the County of Ventura.

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged, and decreed by the Court that the Judgment and Order of the Superior Court in and for the County of Ventura in the above entitled cause, be and the same are hereby affirmed.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 29th day of September, 1913, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 23rd day of November, A. D. 1915.

[Seal Supreme Court of California.]

B. GRANT TAYLOR, *Clerk*,
By A. S. RAMAGE, *Deputy*.

321 In the Supreme Court of the State of California.

S. R. SMITH, Plaintiff and Respondent,
vs.
UNION OIL COMPANY OF CALIFORNIA, Defendant and Appellant.

Petition for Writ of Error.

To the Honorable F. M. Angellotti, Chief Justice of the Supreme Court of the State of California:

Union Oil Company of California, the plaintiff in error in the above entitled cause, shows by this petition to this Honorable Court that in the records, proceedings and decision in the Supreme Court of the State of California, the same being the highest court of said State in which a decision could be had in this suit, a manifest error has occurred greatly to the damage of the said plaintiff in error.

That as appears in the record and proceeding there was drawn in question the construction of that certain Act of Congress of February 12, 1903, entitled "An act defining what shall constitute and providing for assessments on oil mining claims," (Chap. 548, 32nd Stats. at Large, 825, 10 Fed. Stat. Ann. 236), which provides:

"That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: Provided, that said labor will tend to the development or to determine the oil-bearing character of such contiguous claims"

and the title, rights and privileges of said defendant (plaintiff in error) conferred by said Act as appears by the following brief statement:

322 The property in dispute involves the same or identical parcel of land called by the plaintiff in error the "Rawley" and by defendant in error the "Schley" oil claim. Defendant (plaintiff in error) claimed title thereto under a location called the "Rawley," made in 1883, and the annual labor performed thereon since said date and as otherwise shown herein. Defendant also owns adjoining claims known as the "Arizona," adjoining the "Rawley" on the south, and the "Sampson," adjoining the "Rawley" on the west. The complaint alleges, and the answer thereto admits and alleges that the land "is chiefly" valuable for petroleum oil; the geological formation of the land covered by the "Rawley," the "Sampson," and the "Arizona" claims, was and is such that an experienced oil man would locate for oil, and make reasonable expenditures to produce oil therefrom. Oil had prior to the year 1910 been produced on said "Arizona" claim contiguous to the "Rawley," and during the year 1909 a well was sunk two hundred ten feet by defendant through its lessees, for oil in the "Sampson" claim adjoining said "Rawley" on the west, and in 1910, said well was deepened to three hundred sixty-five feet, and oil sands giving every indication of a producing well were encountered therein. Said well was in an oil-producing formation extending and dipping into the "Rawley" claim. The evidence showed that the drilling of said well would and did tend to the development and to determine the oil-bearing character of said "Rawley" claim which was and is contiguous to said "Sampson" claim.

While defendant was thus engaged in the drilling of said well and had performed more than one thousand dollars' worth of labor thereon for and during the year 1909, and performing more than two thousand dollars' worth of labor thereon in the year 1910, on said "Sampson" claim, and through lessees Mitchell and Slocum had also performed at least one hundred dollars' worth of

323 work in building a rig-grade upon said "Rawley" claim in and for the year 1909, and said lessees of said "Rawley" claim were engaged in purchasing and shipping to said "Rawley" claim material, tools and machinery for the purpose of drilling for oil thereon, and while defendant's said lessee, Stockholders Oil Company, was still prosecuting the sinking of said well on said contiguous "Sampson" claim with reasonable diligence, and to-wit: on February 5, 1910, plaintiff and his co-locators went upon the lands embraced in said "Rawley" claim and made their alleged location

and called the same the "Schley" Placer Mining Claim. This suit was brought by plaintiff (defendant in error) to enjoin defendant (plaintiff in error) from developing its said "Rawley" claim and to quiet his, plaintiff's, title to his "Schley" claim. That all of said lands embraced in "Arizona" and "Sampson" claims as well as that included within the said "Rawley" claim were and are commonly considered and recognized as chiefly valuable for the petroleum oil therein contained; and although up to the time of said trial no oil had been developed within said "Rawley" claim by either plaintiff or defendant, the same oil-bearing sands and measures penetrated by the wells in the "Sampson" and "Arizona" claims contiguous to it and owned by the defendant, dipped northerly and easterly into and under it, and could be penetrated by oil wells with reasonable expenditure.

Defendant (plaintiff in error) contended upon the trial, and before the Supreme Court, and still contends, that plaintiff's location was void, without right and was made fraudulently, surreptitiously and clandestinely for the following reasons:

First. That defendant was the owner, in the possession and entitled to the possession of said "Rawley" Placer Mining Claim, at the time of said alleged location of said "Schley" Claim, by virtue of its drilling and sinking said well for oil on said con-
324 tiguous "Sampson" claim,—also owned by defendant,— which well would and did tend to the development and to determine the oil-bearing character of said "Rawley" claim according to the meaning, intent and purpose of said Act of Congress above set out.

Second. That defendant was in the possession and entitled to the possession of said "Rawley" Placer Mining Claim at the time of said alleged location of said "Schley" claim by virtue of the annual labor done and performed thereon from and after the location thereof, and the possession thereof taken by its lessees in the fall of 1909, which said lessees were thereafter in the possession of said claim engaged in purchasing material, tools and machinery and shipping the same to said "Rawley" claim for the sinking of an oil well thereon.

The Superior Court rendered judgment for the plaintiff at the trial, and upon appeal duly and regularly taken by defendant to the Supreme Court of the State of California, said Supreme Court affirmed the judgment of the Superior Court against this plaintiff in error.

That said decision of said Supreme Court was filed on the 29th day of September, 1913, and thereafter and within two years prior to the date hereof was duly entered.

That by said decision, ruling and order of said Supreme Court of the State of California, petitioner, plaintiff in error, was, has been and is divested of its ownership, right, title, interest, possession and right to the possession of said lands embraced within said "Rawley" claim, and unless said ruling, order and decision is reversed by this Honorable Court this petitioner, plaintiff in error, will continue to be so divested of its ownership, right, title, interest, possession, and right to the possession of its said "Rawley" placer mining

325 claim, all of which fully appears in the records and proceedings of the case and in the assignment of errors filed herewith.

Wherefore petitioner prays that a Writ of Error be allowed, and that a transcript of the record, proceedings and papers upon which said decree was rendered duly authenticated be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of said court in such cases made and provided, and that the same may be by this Honorable Court inspected and corrected in accordance with law and justice.

LEWIS W. ANDREWS,
THOS. O. TOLAND,
A. V. ANDREWS,
Solicitors for Union Oil Company of California.

326 STATE OF CALIFORNIA,
County of Los Angeles, ss:

John McPeak, being duly sworn, deposes and says: That I am the Assistant Secretary of the Union Oil Company of California, the plaintiff in error and petitioner named in the foregoing petition; that I have heard read the foregoing petition and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe the same to be true; and that I make this verification for and on behalf of said Union Oil Company of California.

JOHN McPEAK.

Subscribed and sworn to before me this 24th day of September, 1915.

[Seal of Hazel M. Gilbert, Notary Public, Los Angeles Co., Cal.]

HAZEL M. GILBERT,
Notary Public in and for the said County and State.

The foregoing Petition for Writ of Error is granted.
Dated September 28th, 1915.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

327 [Endorsed:] L. A. No. 3140. In the Supreme Court of the State of California: S. R. Smith, plaintiff in error, vs. Union Oil Company of California, defendant in error. Petition for Writ of Error. Andrews, Toland & Andrews, 1030 Marsh-Strong Bldg., Los Angeles, Attorneys for Plaintiff in Error. Filed Sep. 29, 1915. B. Grant Taylor, Clerk, Supreme Court. T.

328 In the Supreme Court of the United States.

UNION OIL COMPANY OF CALIFORNIA, Plaintiff in Error,
vs.
S. R. SMITH, Defendant in Error.

Assignment of Errors.

Comes now the plaintiff in error, in the above entitled cause, and avers and shows that in the record and proceedings in said cause the Supreme Court of the State of California erred to the grievous injury and wrong of the plaintiff in error herein, and to the prejudice and against the rights of the plaintiff in error in the following particulars, to wit:

I.

That the Supreme Court of the State of California erred in its ruling and decision that defendant (plaintiff in error) at the time of the alleged location of said "Schley" claim, was not in possession of said Rawley Placer Mining Claim, within the purpose, intent and meaning of that certain Act of Congress of February 12, 1902, entitled "An Act defining what shall constitute and providing for assessments on oil mining claims" (32 Stat. at Large, 825, Chapter 548; 10 Fed. Stats. Ann. 236), by its (defendant's) drilling a well for oil on the adjoining and contiguous "Sampson" claim and in an oil producing formation extending and dipping into the said "Rawley" claim, the drilling of which, as shown by the uncontradicted and undisputed evidence in the case, would and did tend to the development and to determine the oil-bearing character of said "Rawley" claim.

II.

That the Supreme Court of the State of California erred in its ruling that defendant (plaintiff in error) was not in pos-
329 session of said "Rawley" placer mining claim at the time of the alleged location of said "Schley" claim by plaintiff, by virtue of its well being drilled in the adjoining and contiguous "Sampson" claim, in the oil producing formation extending and dipping into the said "Rawley" claim, and while the work of drilling said well would and did tend to the development and to determine the oil-bearing character of said "Rawley" claim, within the meaning, intent and purpose of said Act of Congress of February 12, 1903, referred to and specified in specification No. I.

III.

That the Supreme Court of the State of California erred in construing said Statute (Act Feb. 12, 1903), according to the construction given to the Statute providing for the performance of annual labor upon a group of lode or quartz or other mineral claims be-

cause of the vast difference between said oil and quartz or other mineral claims, as defined by the Courts in their decisions as to what constitutes discovery, to-wit: That in the case of oil claims, regardless of what the surface indications are, oil in paying quantities, often at an expense of several thousand dollars, must be produced in order to constitute a discovery, while in the case of lode or quartz or other mineral claims a mere trace of mineral, often at no cost or expense whatsoever, will constitute such a discovery.

IV.

That the Supreme Court of the State of California, erred in its ruling and decision that defendant (plaintiff in error) was not in possession and entitled to the possession of said "Rawley" claim at the time of the alleged location of said "Schley" claim, by its lessees Mitchell and Slocum who had entered into the possession of
330 said "Rawley" claim, under lease from defendant, in the fall of 1909 and had built a road and constructed a rig-grade thereon, and at the exact date of said alleged "Schley" location, to wit, February 5, 1910, were engaged in purchasing tools, material and machinery and shipping them to said Rawley claim. Which facts were within the knowledge of and were well known to said plaintiff at the time he made his alleged location.

Wherefore *from* these and other manifest errors appearing in the record, the said Union Oil Company of California, plaintiff in error, prays that the judgment of the Supreme Court of the State of California be reversed and set aside and held for naught and that judgment be rendered for plaintiff in error, granting it its rights under the Constitution and Statutes of the United States, and plaintiff in error also prays judgment for its costs.

LEWIS W. ANDREWS,
THOS. O. TOLAND,
A. V. ANDREWS,
Solicitors for Union Oil Company of California, Plaintiff in Error.

[Endorsed:] L. A. 3140. Clerk's Office Copy. Assignment of Errors. Filed Sep. 29, 1915. B. Grant Taylor, Clerk Supreme Court. T.

331 In the Supreme Court of the United States of America.

(L. A. #3140.)

UNION OIL COMPANY OF CALIFORNIA, Plaintiff in Error,
vs.
S. R. SMITH, Defendant in Error.

Bond.

Know All Men By These Presents: That we, Union Oil Company of California, a corporation, as principal, and the National Surety

Company of New York, as Surety, are held and firmly bound unto S. R. Smith, said Defendant in Error, in the above entitled cause, in the sum of Five Hundred Dollars ($500.00), to be paid to said Defendant in Error, to which payment well and truly to be made we bind ourselves jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 28th day of September, 1915.

Whereas, the above named Plaintiff in Error seeks to prosecute its Writ of Error to the Supreme Court of the United States to review and reverse the judgment entered in the above entitled action by the Supreme Court of the State of California,

Now, Therefore, the condition of this obligation is such, that if the above named Plaintiff in Error shall prosecute its said Writ of Error to effect and answer all costs and damages that may be adjudged, if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.] UNION OIL COMPANY OF CALIFORNIA, *a Corp.*,
By F. A. HAYES,
Ass't V. President.
NATIONAL SURETY COMPANY.
By FRANK L. GILBERT,
Attorney-in-Fact.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this twenty-ninth day of September, in the year One Thousand Nine Hundred and Fifteen before me, Julius Calmann, a Notary Public in and for the said City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared Frank L. Gilbert, known to me to be the person whose name is subscribed to the within instrument as the Attorney in fact of National Surety Company and he acknowledged to me that he subscribed the name of National Surety Company thereto as principal and his own name at Attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[SEAL.] JULIUS CALMANN,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed:] L. A. 3140. Union Oil Company of California, Plaintiff in Error, vs. S. R. Smith, Defendant in Error. Surety—National Surety Co., 105 Montgomery St., San Francisco, California. Filed Sep. 29, 1915. B. Grant Taylor, Clerk Supreme Court. T.

The within bond is hereby approved this 29th day of September, 1915. F. M. ANGELLOTTI,
Chief Justice of Supreme Court of State of California.

332 In the Supreme Court of the United States.

UNION OIL COMPANY OF CALIFORNIA, Plaintiff in Error,
vs.
S. R. SMITH, Defendant in Error.

Allowance of Writ.

Comes now the above named Union Oil Company of California, Plaintiff in Error, on this — day of September, 1915, and files and presents to this court its petition praying for the allowance of a Writ of Error intended to be urged by it; and praying further that the duly authenticated transcript of the record, proceedings and papers upon which the judgment herein was rendered may be sent to the Supreme Court of the United States and that such other and further proceedings may be had in the premises as may be just and proper; and upon the consideration of said petition, this Court desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions therein presented.

It is ordered by this court that a Writ of Error be allowed as prayed for, providing, however that said Union Oil Company of California, plaintiff in error, give bond according to law in the sum of $500.00.

In testimony whereof, witness my hand this 28th day of September, 1915.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

333 [Endorsed:] Clerk's Office Copy. L. A. No. 3140. In the Supreme Court of the United States. Union Oil Company of California, Plaintiff in Error, vs. S. R. Smith, Defendant in Error. Allowance of Writ. Andrews, Toland & Andrews, 1030 Marsh-Strong Bldg., Los Angeles, attorneys for plaintiff in error. Filed Sep. 29, 1915. B. Grant Taylor, Clerk, by T., Deputy.

334 In the Supreme Court of the United States, — Term.

UNION OIL COMPANY OF CALIFORNIA, Plaintiff in Error,
vs.
S. R. SMITH, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of California before you, being the highest court of law or equity of the said State in which a decision could be had in said

suit between S. R. Smith, Plaintiff and Respondent (Defendant in Error) vs. Union Oil Company of California, a corporation, Defendant and Appellant (Plaintiff in Error), wherein was drawn in question the construction of a statute of the United States and the decision was against the title, right and privilege especially set up and claimed under said Statute, a manifest error has happened to the great damage of the said Union Oil Company of California, as by its complaint appears, and it being fit that the error, if any, which hath happened should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf:

You are hereby commanded if judgment be therein given,
335 that then under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same at Washington, in the District of Columbia, on the 23d day of November, 1915 next, in the said Supreme Court to be there and then held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the said Supreme Court, this 25th day of September, in the year of our Lord one thousand nine hundred fifteen, and of the Independence of the United States the One Hundred Thirty-ninth.

[Seal of the U. S. District Court, Southern Dist. of California.]

WM. M. VAN DYKE,
Clerk of the District Court of the United States for the Southern District of California,
By CHAS. N. WILLIAMS,
Deputy Clerk.

Allowed, upon giving bond according to law in the sum of $500.00, this 28th day of September, 1915.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

336 [Endorsed:] L. A. No. 3140. In the Supreme Court of the United States. S. R. Smith, plaintiff and respondent, vs. Union Oil Company of California, defendant and appellant. Writ of Error. Andrews, Toland & Andrews, 1030 Marsh-Strong Bldg., Los Angeles, attorneys for appellant. Filed Sep. 29, 1915. B. Grant Taylor, Clerk, by T., Deputy.

337 In the Supreme Court of the United States.

UNION OIL COMPANY OF CALIFORNIA, Plaintiff in Error,
vs.
S. R. SMITH, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to S. R. Smith, of Los Angeles, California, Greeting:

You are hereby directed and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., November 23rd, 1915, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of California, wherein Union Oil Company of California, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error and in said Writ of Error mentioned should not be corrected and why speedy justice should not be done for the plaintiff in error in that behalf.

Witness the Chief Justice of the Supreme Court of the State of California this 28th day of September, 1915.

[Seal Supreme Court of California.]

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

Attest:
B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California.

338 [Endorsed:] L. A. No. 3140. In the Supreme Court of the United States. S. R. Smith, plaintiff and respondent, vs. Union Oil Company of California, defendant and appellant. Citation. Andrews, Toland & Andrews, 1030 Marsh-Strong Bldg., Los Angeles, attorneys for appellant. Filed Sep. 29, 1915. B. Grant Taylor, Clerk Supreme Court. T.

339 In the Supreme Court of the United States.

UNION OIL COMPANY OF CALIFORNIA, Plaintiff in Error,
vs.
S. R. SMITH, Defendant in Error.

Admission of Service of Citation.

Due service of the Citation in the above entitled action upon the undersigned attorney of record for said defendant in error is hereby

admitted this 18th day of October, 1915, and receipt of a true copy thereof is hereby acknowledged.

ALTON M. CATES,
Attorney for Defendant in Error.

340 [Endorsed:] Original. L. A. No. 3140. In the Supreme Court of the United States. Union Oil Company of California, plaintiff in error, vs. S. R. Smith, defendant in error. Admission of service of citation. Andrews, Toland & Andrews, 1030 Marsh-Strong Bldg., Los Angeles, Attorneys for plaintiff in error. Filed Oct. 22, 1915. B. Grant Taylor, Clerk, by Wm. S. Traeger, Deputy.

341 In the Supreme Court of the State of California.

L. A. 3140.

S. R. SMITH, Plaintiff & Respondent,
vs.
UNION OIL COMPANY OF CALIFORNIA, Defendant & Appellant.

Præcipe.

To the Clerk of said Court.

SIR: Please prepare record on writ of error in the above entitled cause, said record to consist of the following documents filed and used in the Supreme Court of the State of California, to wit:

Transcript on Appeal, Appellant's Opening Brief, Respondent's Brief, Appellant's Opening Brief on Submission of case to Court en banc, and Decision of the Supreme Court of California.

Dated October 27, 1915.

ANDREWS, TOLAND & ANDREWS,
Attorneys for Union Oil Company of California.

342 M. D. Andrews being first duly sworn, says that he is a male citizen of the United States, over the age of twenty-one years, and not a party to, or in any wise interested in the action in which this paper is filed. That on Friday, October 29, 1915, he served a true copy of the within Præcipe upon S. R. Smith, by serving the same upon and leaving a true copy with his attorney of record A. M. Cates at his office.

M. D. ANDREWS.

Subscribed and sworn to before me this 29th day of Oct., 1915.
H. J. LELANDE, *Clerk,*
By L. E. LAMPTON.

343 SUPREME COURT,
State of California, ss:

I, B. Grant Taylor, Clerk of the above entitled court, do hereby certify that the foregoing documents, to wit:—transcript on appeal, appellant's opening brief, brief of respondent, brief of appellant on

submission of case; opinion of the Supreme Court of California (containing at the end thereof, the final judgment of said court) petition for writ of error, assignment of errors, allowance of writ, bond, writ of error, citation, admission of service of citation, and præcipe, constitute a full and complete transcript (save as to certain stipulations for time and similar documents, omitted at request of attorney for appellant) of the record and proceedings in the case of S. R. Smith, plaintiff and respondent vs. Union Oil Company of California, a corporation, defendant and appellant, as the same now appear on file in my office.

In Witness Whereof, I have hereunto sat my hand and affixed the seal of said court in my office in San Francisco, Cal., this 8th day of November, A. D. 1915.

[SEAL.]

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California.

Endorsed on cover: File No. 25,002. California Supreme Court. Term No. 296. Union Oil Company of California, plaintiff in error, vs. S. R. Smith. Filed November 23d, 1915. File No. 25,002.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

No. [redacted]8

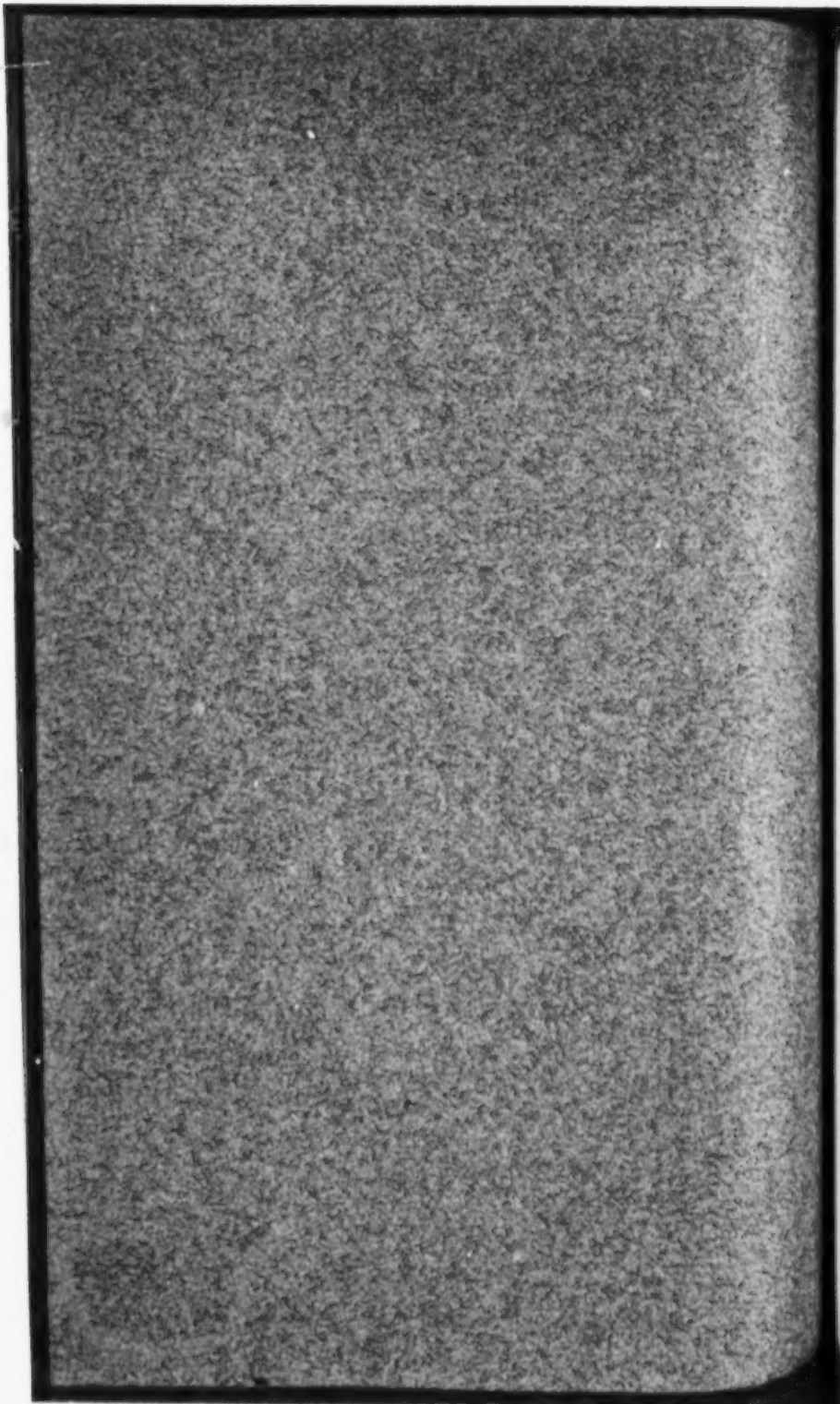
Union Oil Company of California,
a corporation,
Appellant and Plaintiff in Error,
vs.
S. R. Smith,
Respondent and Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF OF PLAINTIFF IN ERROR.

LEWIS W. ANDREWS,
THOS. O. TOLAND,
A. V. ANDREWS,
Attorneys for Plaintiff in Error.

Parker & Stone Co., Law Printers, 332 West Third St., Los Angeles.



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IN THE

SUPREME COURT

OF THE

UNITED STATES.

No. 296.

Union Oil Company of California, a corporation,
Appellant and Plaintiff in Error,
vs.
S. R. Smith,
Respondent and Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT.

This case is in this court on writ of error to review the decision of the Supreme Court of the state of California in which the interpretation of federal statutes is involved.

The errors which we shall rely upon are specified in the assignment of errors heretofore filed

in this court and embodied in the record at pages 163 and 164.

One of the federal statutes involved in the case and upon which specifications of error numbers I, II and III are based, is the Act of Congress of February 12, 1903, entitled "An act defining what shall constitute and providing for assessments on oil mining claims," and which provides:

> "That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all; *Provided*, That said labor will tend to the development or to determine the oil-bearing character of such contiguous claims."
>
> 32 Stat. Large, 825, Chap. 548; 10 Fed. Stat. Ann. 236.

Statement of Facts.

The issue in this case arises between two oil mining claims which cover identically the same ground. [Record pp. 16, 17, 20, 154.]

The claim of the appellant is named the Rawley, that of the respondent the Schley, and the land affected by them is unsurveyed public land of the United States situate in Ventura county,

California, and on or in the vicinity of section 17, T. 5 N., R. 19 W., S. B. M.

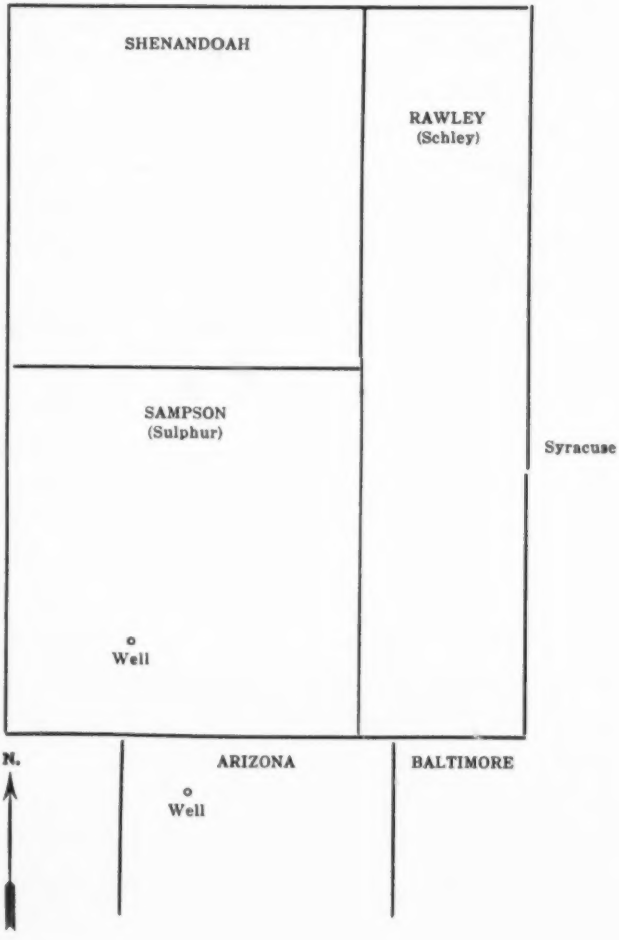
Appellant's said claim, the Rawley, was located by citizens of the United States and monumented on the ground, and notice of location thereof posted and recorded in the local mining district in 1883, and the title thereof derived by mesne conveyances to the appellant, which is the owner thereof. [Record pp. 20, 62, 63, 155.]

The Sampson, Shenandoah and Arizona claims, which adjoin the Rawley, were likewise located as early as 1877, and have been maintained and title thereof derived through mesne conveyances to the appellant, which is still the owner thereof. [Record pp. 63, 155.] The annual assessment work was done by the appellant and its predecessors in interest on the Sampson, Arizona, Rawley and other claims adjacent for every year since their location until the commencement of this suit, and affidavits of such assessment work were filed for each of said years except the year 1908. Thus the plaintiff had at all times maintained active and persistent claim to all of its properties in that locality and expended money thereon every year as stated. [Record p. 64; and see opinion of Judge Clark in respondent's opening brief and Record p. 129.]

As early as 1889 the appellant made discovery of oil, by a well sunk on the Arizona claim (adjacent to its Rawley claim on the south), which well it pumped for oil and maintained its right to said claim at all times thereafter until the commencement of this action by the doing of the annual assessment work on said Arizona claim.

The relative positions of the Rawley, the Sampson, the Shenandoah, the Baltimore, the Syracuse and the Arizona claims is as shown upon the following

Outline Map of Rawley, Sampson and Other Claims.



The Rawley Claim Is Oil Land.

The discovery well on the Arizona claim is indicated on the above map by a dot near the word "well" thereon. It was sunk to a depth of 695 feet and oil was obtained therein at a depth of 320 feet. [Record p. 58.]

The position of the well which was being sunk on the Sampson claim by Stockholders Oil Company, as lessee of Union Oil Company of California, the appellant, is indicated on the map by the dot near the word "well" thereon.

The dip of the formation is easterly and is indicated on the foregoing map by the arrows. To the west of the Rawley claim, where the well was being drilled on the Sampson, the formation, that is, the oil-producing sand, is shallower; but since it dips easterly it becomes deeper in and under the Rawley. [Record pp. 61, 62.]

Not only does all of the testimony thus show that the whole region surrounding the Rawley is oil land and that the Rawley claim is itself oil land in a general sense, but the parties in their pleadings base their respective claims upon the proposition that the Rawley claim is oil land.

The plaintiff's Amended Complaint [Record p. 10] alleges "That the said property herein described is chiefly valuable for the petroleum oil and other minerals therein contained."

No other minerals than oil are by any of the

testimony indicated as existing in the Rawley claim or in any of that region.

Moreover, the Amended Answer of the defendant [Record pp. 15, 16] alleges that defendant is the owner, in the possession and entitled to the possession of the Rawley claim, which is described as "situate in what is known as the Little Sespe Petroleum Mining District, Ventura county, California." The existence of this mining district shows the region to be considered mineral in character; the name of the district indicates the mineral which thus characterizes it to be petroleum, while the location notice itself shows that the Rawley was considered oil land at an early date.

The Amended Answer also alleges that said Sampson claim, owned and possessed by the appellant, which is contiguous to the Rawley on the west, *is chiefly valuable for the petroleum and other mineral oils therein contained.* [Record p. 16.] Also that the defendant, by its lessee, Stockholders Oil Company, was engaged in sinking a well for oil on said Sampson claim, and that the sinking of said well on the last named claim tended to the development and to determine the oil-bearing character of said Rawley claim. [Record pp. 16, 17.] Likewise the Amended Answer alleges the sinking of a well and the discovery of oil in said Arizona claim, adjacent to the Sampson and the Rawley, and

further alleges, *"that all of the property and lands (which includes the Rawley) herein described are chiefly valuable for petroleum oil."* Thus it is the fundamental assumption of all claim of right by the plaintiff, as well as by the appellant, that the lands embraced in said Rawley claim come and are strictly within the purview of the Act of Congress of February 11th, 1897, Chapter 216 (29 Stat. at Large 526; 5 Fed. Stats. Ann. 47), authorizing the entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws of the United States, where such lands are "chiefly valuable therefor."

The opinion rendered by the Honorable Judge of the trial court in deciding this case, counsel for respondent says [Record p. 126], "is a very clear statement of facts," and we refer to it as throwing light upon the real facts [Record p. 129].

The trial court states therein that the *identical mining ground* in controversy was located March 5, 1883, as the Rawley claim, by the predecessors in interest of appellant, by posting notice of location [Record p. 131].

The Rawley claim was duly monumented, and between September, 1895, and the trial, by mesne conveyances, the rights of the original locators were vested and now rest in the Union Oil Com-

pany of California (plaintiff in error herein), which the trial judge states [Record p. 131]

"is also in occupancy, has developed and is still developing many mining claims in the 'Little Sespe' District, among them being the Sampson and Shenandoah claims, contiguous to the Rawley on the west; 'Syracuse' on the east; 'Baltimore' to the south, and 'Arizona' or 'Arcadia' west of the Baltimore. A well is being drilled by Stockholders Oil Company, who, *under lease from the defendant* (plaintiff in error), have been operating thereon for over a year, encountering some difficulty in sinking the well, but they have passed through sufficient oil sands *to give every indication of a successful well.*

"A producing well was developed upon the Arizona claim by the predecessors in interest of defendants in 1899, but after pumping for some time the well was abandoned in 1900. The Union Oil Company has yearly expended large sums in keeping the roads and trails which lead to the above-mentioned claims and all property claimed by it in the Little Sespe District in repair, so that ingress and egress might be had."

Thus the lands in controversy were for many years considered and are justly alleged in the pleadings of both litigants in this case, to be chiefly valuable for oil—within the meaning of the placer mining law, as made applicable to oil, and within the meaning of said statute authorizing assessment work to be done upon one claim for the benefit of a group of five.

That the lands in controversy were and are *"oil lands"* is abundantly shown by the testimony of the witness John Irwin [Record pp. 56-63].

The Well in Process of Drilling on the Sampson Did and Does Tend to the Development and to Determine the Oil Bearing Character of the Rawley.

Mr. Irwin's qualifications as an expert and his familiarity with that territory are admitted [Record p. 56]. He saw the well being drilled on the Sampson (which adjoins the Rawley on the west [Record p. 57]), and says the drilling rig was sufficient.

The witness Irwin pointedly testified that the well that was being sunk on the Sampson did tend and does tend to the development and to determine the oil-bearing character of the Rawley claim. [Record p. 58.] He said: "I always went on the shallower territory and worked back" [p. 58]. His opinion that the well on the Sampson would strike oil and would tend to develop and further to determine the oil-bearing character of the Rawley was clearly reinforced by the discovery in the well on the Arizona [Record p. 58]. The oil, owing to the dip of the formation, would be got deeper in the Rawley [Record p. 60].

The well which was being sunk on the Sampson claim in November, 1909, and until this action was begun, November 25, 1910, tended to the development and to determine the oil-bearing character of the Rawley claim, which adjoins the Sampson to the east [Record pp. 58, 155]. In

view of the formations passed through therein, and of the discovery well actually sunk on the Arizona, the well being sunk on the Sampson was the *one well* contemplated by the "five claims" act, to be sunk on one for five claims.

In 1909 far in excess of $500 in actual expenditure for equipment and drilling was used in sinking the well on the Sampson; and from August 1st, 1910, until after this suit was begun, November 25, 1910, the work in sinking the well on the Sampson (one of the group of five claims and adjoining the Rawley on the west), was in actual progress, with a necessary expenditure, during the period last named, of an amount far in excess of $500 [Record pp. 63, 81, 82].

Ward, the driller, states that the well on the Sampson was sunk 145 feet before August 1, 1910; by the time the suit was begun it had been pushed to 365 feet deep, with oil discoveries between 210 and 215 feet, and again at 265 feet [Record pp. 63, 81, 82].

Brunton, the agent of the locators of the Schley claim, had full knowledge of the development on the Sampson, of the existence of the Rawley claim as made by appellant, and of the oil-bearing character of the Rawley, the Sampson and the remainder of the group of five, before and at the time of the location of the Schley claim [Record pp. 32-34].

Brunton and the locators of the Schley knew of said lease to the Stockholders Oil Company; that the lessee, in May, 1909, installed a drilling outfit on the Sampson and began sinking said well for oil, and that by May, 1910, it had been sunk to the depth of about 150 feet [Record p. 54].

Brunton also knew of the lease by the appellant to Mitchell and Slocum in November, 1909; also of assessment work done by those lessees for that year, and of their preparation for the continuation of the development they had begun, and of appellant's active claim to the Rawley through these lesees, and its sub-lessees, Reynolds and Mann, from that time on till the commencement of the suit; and also knew at all the times of the development of the group by the sinking of the well on the Sampson.

The Facts On and After November 6th, 1909—the Date of the Lease from Union Oil Company to Mitchell and Slocum.

The Mitchell and Slocum lease from the Union Oil Company is set out in full. [Record pp. 90-94.]

It demises to the lessees the Rawley claim for twenty years from November 6, 1909, with the usual rights to drill for oil; provides that the lessees shall commence the actual operations of drilling for oil, gas, or other hydrocarbons, by

February 1, 1910; and carry on their operations continuously and in good faith until a well shall have been drilled fifteen hundred feet deep, or a paying well found at a shallower depth, and two such wells shall be drilled each year during the term of the lease, fifteen barrels per day being fixed as a paying production. Failure to drill shall enable lessor to claim a forfeiture. Producers shall operate producing wells diligently, but may cease to produce oil when it is below forty cents per barrel at the wells. The lease reserves as royalty one-eighth of the oil produced, to be paid in kind.

The lessees shall well and truly do all the assessment work required by law to be done, at their own cost and expense, and will make the necessary affidavit of labor performed on behalf of the lessor, commencing with the year 1909.

Moreover the lease contained all of the usual covenants in regard to the payment of taxes, the keeping of the record of all drilling, the keeping of the property clear of laborers and material men's liens; for forfeiture in the event of a failure or refusal to pay rent; and the contract of lease is made binding upon the successors and assigns of the respective parties.

Pursuant to this lease, in December, 1909, Mitchell and Slocum, the lessees, built a rig grade on the southwest corner of the Rawley claim and constructed a road thereunto as the

annual assessment work, for the year 1909, the same costing and being of the value of at least one hundred dollars. [Record, pp. 38, 67.]

The site where this rig grade was made was within a few feet—fifty or seventy-five feet—of that selected afterward by Stowe, Smith's lessee, and should be presumed to have been well chosen.

This annual work for 1909 so made and filed by lessee Slocum, in behalf of himself and his co-lessee, taken in connection with the well-known character of the land *as oil land*, and considered also as having been done by said lessees, with the expenditure of a substantial sum of money in the performance of a covenant of their written lease just taken from the appellant, and binding them to diligent operation of the Rawley claim, and considered, also, as a part of the activities of said lessees, showing a clear purpose on their part to live up to the requirements of their lease [Record, pp. 39, 42-45, 52, 53]; and taken also in connection with the sub-lease of said property, the Rawley claim, to Reynolds and Mann (the Middle Sespe Oil Company [Record, p. 39]) and their prompt commencement of large expenditures and diligent activities for complying with said lease and developing said Rawley claim, including the actual delivery thereon by them of material costing them some $2300.00 for use in the oper-

ation of said Rawley claim for oil [Record, pp. 43, 53], the building of said road to and said rig grade upon said Rawley claim by Mitchell and Slocum, constitutes one of such a succession of acts done, in good faith, as amounted, with the acts of location and recording of said Rawley claim, to full notice of an actual lawful possession thereof by the appellant through its lessees and their privies, and a segregation thereof from the public domain under the mining laws of the United States in December, 1909, and thereafter, so that the same was not open to location on February 5, 1910, or on February 27, 1910, or at any other time when it is claimed by defendant in error to have been in possession by him or his predecessors under the so-called Schley location. The entry of the locators of the Schley to make their location was necessarily made in trespass upon the lawful possession of appellant, and could initiate no right [Record pp. 25, 28, 29, 31-34, 39, 40, 42-45, 52, 53, 66].

Specifications of Error.

I.

Plaintiff in error contends that the ruling, decision and judgment of the state Supreme Court [Record pp. 154-158] are erroneous in the following respects:

That the Supreme Court of the state of California erred in its ruling and decision that appellant (plaintiff in error) at the time of the alleged location of said "Schley" claim, was not in possession of said Rawley placer mining claim, within the purpose, intent and meaning of that certain Act of Congress of February 12, 1903, entitled "An Act defining what shall constitute and providing for assessments on oil mining claims" (32 Stat. at Large, 825, chapter 548, 10 Fed. Stats. Ann. 236), by its (appellant's) drilling a well for oil on the adjoining and contiguous "Sampson" claim and in an oil producing formation extending and dipping into the said "Rawley" claim, the drilling of which, as shown by the uncontradicted and undisputed evidence in the case, would and did tend to the development and *to determine* the oil-bearing character of said "Rawley" claim. [Record pp. 156-158.]

II.

That the Supreme Court of the state of California erred in its ruling that appellant (plaintiff in error) was not in possession of said "Rawley" placer mining claim at the time of the alleged location of said "Schley" claim by plaintiff, by virtue of its well being drilled in the adjoining and contiguous "Sampson" claim, in the oil producing formation extending and

dipping into the said "Rawley" claim, and while the work of drilling said well would and did tend to the development and to *determine* the oil-bearing character of said "Rawley" claim, within the meaning, intent and purpose of said Act of Congress of February 12, 1903, referred to and specified in specification No. 1. [Record pp. 156-158.]

III.

That the Supreme Court of the state of California erred in construing said statute (Act Feb. 12, 1903), according to the construction given to the statute providing for the performance of annual labor upon a group of lode or quartz or other mineral claims, because of the vast difference between said oil and quartz or other mineral claims, as defined by the courts in their decisions as to what constitutes discovery, to-wit: That in the case of oil claims, regardless of what the surface indications are, oil in paying quantities, often at an expense of several thousand dollars, must be produced in order to constitute a discovery, while in the case of lode or quartz or other mineral claims, a mere trace of mineral, often at no cost or expense whatsoever, will constitute such a discovery. [Record pp. 156-158.]

IV.

That the Supreme Court of the state of California erred in its ruling and decision that appellant (plaintiff in error) was not in possession and entitled to the possession of said "Rawley" claim at the time of the alleged location of said "Schley" claim, by its lessees Mitchell and Slocum, who had entered into the possession of said "Rawley" claim under lease from defendant, in the fall of 1909, and had built a road and constructed a rig-grade thereon, and at the exact date of said alleged "Schley" location, to-wit, February 5, 1910, were engaged in purchasing tools, material and machinery and shipping them to said Rawley claim. Which facts were within the knowledge of and were well known to said plaintiff at the time he made his alleged location. [Record p. 158.]

POINTS AND AUTHORITIES.

I.

Plaintiff in Error Was in Possession of the Rawley Claim Within the Full Intent and Meaning of the Five Claims Act—Construction of Act.

Plaintiff in error contends that the decision of the Supreme Court of the state of California is erroneous, as pointed out in specifications of error numbers I, II and III, because of the fact that, at the time of the pretended location of the alleged Schley claim, plaintiff in error was,

—by and through the filing, by its predecessors, upon the Rawley claim, in 1883, as a placer mineral claim chiefly valuable for petroleum oil; by and through its having ever since claimed it as such mineral claim as hereinabove stated; by and through its actual possession and occupancy of the Sampson claim (lying contiguous to the Rawley on the west and also owned by plaintiff in error), and by and through the boring of said well on the Sampson claim in an oil formation which dips into the Rawley claim,—in the possession and actively at work developing and determining the oil-bearing character of the Rawley claim contiguous thereto, in full compliance with the provisions of the Act of Congress,—heretofore referred to,—of February 12, 1903, which provides as follows:

> "That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all; *Provided*, That said labor will tend to the development or to determine the oil-bearing character of such contiguous claims."

32 Stats. at Large, 825;

10 Fed. Stat. Ann. p. 236.

This act has not, up to this time, been construed, except by the decision under review, by any court of last resort. While in its nature and effect it is substantive in character, it is also in its effect a remedial act.

Silver v. Ladd, 7 Wall. (U. S.) 219, 225;
Stark v. Starrs, 6 Wall. (U. S.) 402;
Cutting v. Cutting, 6 Fed. 259, 266;

and must be construed liberally so as to afford all the relief within the power of the court, which the language of the act indicates that Congress intended to grant.

Beley v. Naphtaly, 169 U. S. 353, 359;
Jones v. Guaranty Co., 101 U. S. 622, 626;
White v. The Mary Ann, 6 Cal. 462, 471.

The intention in remedial statutes is liberally inferred and to a greater extent dominates the letter of the provision.

In re Matthews, 109 Fed. 603, 617.

It is not unusual to extend the enacting words of a remedial statute beyond their literal import and effect, in order to include cases within the same mischief.

Dubois v. Hepburn, 10 Pet. (U. S.) 1, 22;
U. S. v. Hogg, 111 Fed. 292, 294;
Singer Company v. McCullock, 24 Fed. 667, 668.

In the construction of statutes for the purpose of ascertaining the legislative intent, regard is to be had not so much to the exact phraseology in which that intent has been expressed, as to the general tenor and scope of the entire legislative scheme embodied in the statute.

Palache v. Pac. Ins. Co., 42 Cal. 418, 430;
Swinnerton v. Monterey Co., 76 Cal. 113, 116;
Gray v. Windsor, 77 Cal. 525, 527;
Murphy v. San Louis Obispo, 119 Cal. 624, 628.

In determining the intention and purpose of Congress in passing the "Five Claims Act" it will be necessary to consider the meaning and use of certain terms employed in said act as applied to locations, and to consider, also, the matter of annual assessment labor upon placer mining claims.

THE TERMS, CLAIM AND LOCATION.

"Independent of Acts of Congress providing a mode for the acquisition of title to the mineral lands of the United States, the term 'mining claim' has always been applied to a portion of such lands to which the right of exclusive possession and enjoyment, by a private person or persons, has been asserted by actual occupation, or by

compliance with local mining laws, or rules, usages, or customs."

Williams v. Santa Clara Min. Assoc., 66 Cal. 193, 198, 5 Pac. 85.

The terms 'mining claim' and 'location' are in one sense identical, and may be used indiscriminately to indicate the same thing. Thus the *location, which is the act of taking the parcel of mineral land,* became, among miners, synonymous with the mining claim originally appropriated, and so if the miner has only the ground covered by one location his mining claim and location are identical and the two designations may be indiscriminately used to denote the same thing.

Del Monte Min. etc. Co. v. Last Chance etc. Co., 171 U. S. 55, 74, 18 S. Ct. 895, 43 L. Ed. 72;

St. Louis Smelting Co. v. Kemp, 104 U. S. 636, 649, 26 L. Ed. 875.

"Mining claims, i. e., claims asserted under the mining laws of the United States to certain lands of the government *supposed to contain mineral* deposits."

Salisbury v. Lane (Idaho), 63 Pac. 382, 384.

An eighty-acre tract of land in process of development *as* an oil mine is a mining claim

within the meaning of the lien law, regardless of whether oil has been discovered therein or not.

Berentz v. Belmont Oil Mining Co., 148 Cal. 577, 582.

"In mining, the word 'location' sometimes means the lode or placer ground actually located. This is called the 'miner's location.' Sometimes it is used to mean the *act of appropriating, taking up or claiming the lode or placer claim. These are styled acts of 'location.'* In the abstract the term 'mining claim' and 'location' are synonymous. But in the concrete the term 'mining claim' may indicate one or more locations, and when several locations are grouped and operated as one claim the aggregatoin is still called a 'mining claim.' "

20 A. & E. Encyc. Law (2nd Ed.) 704.

"The words 'mining claim' as used in the law has no reference to the different stages in the acquisition of a government title. In our opinion it includes all mines, *whether the title is inchoate*, as in the case of a mining claim in its strict sense, *or perfect*, as in the case of a fee simple title."

Bewick v. Muir, 83 Cal. 368, 372.

The word "claim" as applied in mining may mean a number of locations contiguous to each other owned by one person or corporation, regardless of date or dates of location.

Lindley on Mines (3rd Ed.), secs. 327, 628.

It is our contention that the term "locate," as used in the "Five Claims Act" means *defining the position and boundaries*, and doing such acts as indicate and publish the intention to occupy and hold a parcel of public land as "oil land" under the license of the United States mining statutes.

COMPARATIVE GROWTH OF THE MINING LAW.

There have been comparatively few material changes, since 1866, in the location of lode claims, which, except in certain sections, contain a fraction more than twenty acres each. Each location must have a separate discovery and location notice and the boundaries of each must be well defined. As to the number in one group there is no limit. The annual assessment labor may be done either upon each claim separately, upon one claim of a group, or even off of the located area entirely, but wherever done there must be $100.00 worth of labor for each claim represented.

A tunnel site may be located for the purpose of boring a tunnel to develop lode claims already located or to prospect for blind lodes. The law of assessment labor does not apply to a tunnel site location, and a discovery is not essential to its validity. The law requires but reasonable diligence in prosecuting work upon a tunnel site location in order to protect the claimant's rights

to blind lodes, and when such lodes are discovered, discovery dates back to date of the tunnel site location.

Uinta Tunnel Co. v. Creede & C. C. M. Co., 196 U. S. 337, 355.

Judge Lindley, in his work on Mines (3rd edition), section 480, page 1104, states the rule of interpretation as applied to tunnel sites, as follows:

> "It is an elementary rule in the interpretation of laws that a given statute should be construed in connection with all other statutes which are essentially *in pari materia*.
>
> "In applying this doctrine to the tunnel laws, and attempting a construction which would be in harmony with the entire body of the mining law, the courts, state and federal, have encountered serious difficulties, and have reached results which practically place locations on lodes discovered in a tunnel located under the tunnel laws in a distinct category by themselves, leaving still open for discussion many important questions which will have to be adjusted without regard to the main body of the mining laws. * * *"

Placer claims may be either of twenty acres by one individual or a maximum of 160 acres by an association of eight individuals. It was formerly held that in order to perfect a placer

location of 160 acres, a discovery should be made upon each 20 acres thereof.

S. P. Co. v. Griffin *et al.*, 20 L. D. 485, 487;
Rhodes v. Treas., 21 L. D. 502, 503;
Louise Mg. Co., 22 L. D. 663, 665.

Now one discovery within the boundaries of a 160-acre claim is sufficient.

Union Oil Co. (on review), 25 L. D. 351;
Reins v. Raunheim, 28 L. D. 526;
Merced Oil Company v. Patterson, 162 Cal. 358, 364.

The principle has become axiomatic that development by working is the condition upon which the government allows the miner to hold his possessory title until patented.

Co. Rep. M. Co. v. Lebanon M. Co. (Colo.), 12 P. 212, 213;
O'Reilly v. Campbell, 116 U. S. 418, 422.

By reason of the original requirement for discovery in lode claims and by unwarranted analogy drawn between placer claims and lode claims, and on account of the ease of discovery of mineral both in lode and gold placer claims in the early history of mining in California, and the west, it came to be the holding of the courts that possession of placer claims could not be

maintained except when based upon discovery, and further the idea appeared in the decisions (as we believe without any basis in any provision of statute mining law), that assessment work could not avail anything except when performed upon a claim in which there had already been made a discovery of mineral.

It came to be the understanding, first firmly impressed upon the legal profession by the case of Miller v. Chrisman, 140 Cal. 440, that discovery was essential to a perfect placer claim.

The extension of the placer mining law to oil lands by the Act of February 11, 1897 (5th Federal Stats. Ann. 47), and the difficulty and great expense attendant upon the sinking of wells to make discovery of oil in oil lands, and the intimation in Miller v. Chrisman, 140 Cal. 440, that the only way that *discovery* of oil can be made in oil lands is by the sinking of wells, made it evident to those engaged in that business that the application of this extreme doctrine that no person could maintain a claim to oil lands by the doing of annual assessment work thereon, unless he had first made a discovery of oil thereon, was in fact a very great burden upon the oil miner. The great growth of the oil business prior to the year 1903, particularly in California, where the doctrines settled by the case of Miller v. Chrisman were best understood, made the existence of this burden very evident;

and in consequence the matter was brought to the attention of congress and the result was the enactment of the "Five Claims Act" February 12, 1903, to relax the burden of this stringent rule, and placing the oil miner upon an equality with tunnel miners and other miners who are permitted to do their annual assessment work upon one claim for the benefit of not only five claims, but any number of contiguous claims, so situated that development work upon one thereof will be for the benefit of all thereof.

We contend that it was the purpose of this act to encourage the oil miner to go out upon lands recognized as oil lands, locate his five or less claims by posting his notices, by setting his monuments and by recording his notices, and thereby become entitled to sink a well upon one of those claims without starting in upon the others, and to be allowed to apply the $500.00 worth of work upon that one claim for the benefit of his five claims, provided, that there is but one ownership of the five claims and that they are so situated that the sinking of the well upon one will tend to develop the minerals in, or to prove the oil-bearing character of the remaining claims of his group; and this right would be of no use to him if it were necessary in order that he might have the benefit of the Five Claims Act that he should first make discovery

of oil upon each of his claims before he would be allowed to do the work upon one for all.

In short, it is our contention that it was the purpose of the "Five Claims Act" to permit and encourage the application of the funds necessary to do the assessment work upon five claims under the rule which requires at least $100 per year for each claim, in one place, upon one claim, in order that an efficient and valuable result could thereby be obtained by the doing of labor in that one place which "will tend to the development *or* to determine the oil bearing character of such *contiguous* claims."

In our opinion, if discovery shall already have been made upon any one of the contiguous claims, there is no need of remedial, or other, legislation of the "Five Claims Act" kind, allowing the doing of work which "will tend to determine its oil-bearing character," because such antecedent discovery will already have established that character of the land.

Thus the clear effect of this act was intended to be that of so changing the rule in regard to annual assessment work, that it would, in the case of oil claims so located and situated and owned, be no longer necessary that they should meet the rule which has been established by judicial decision (so far as placer mining claims are concerned) that such annual assessment work should be done and could be effectively

done only upon or for the benefit of claims upon which discovery shall previously have been made, and *furnish statutory authority and right* for a practice, in the case of such oil claims, of applying, to the limited extent of five claims only, such annual assessment work upon any one claim for the benefit of, and to enable the owner to continue to have the right of possession of and to hold, all of the group, regardless of whether oil shall have been previously discovered on any one of said group of five claims or not.

From the earliest period of mining in the west, the locator of mining claims of all classes was required to perform a certain amount of labor, or expend a certain amount of money in betterments and improvements upon, or for the benefit of his located claims, as a condition upon which he might continue in the possession and enjoyment of the mining ground appropriated by him to the exclusion of others. A failure to perform the necessary work required by the local rules or customs amounted to an abandonment of the claim and thereupon it might be occupied and appropriated by another.

Depuy v. Williams, 26 Cal. 310, 314;
Kramer v. Settle, 1 Idaho 485, 492;
Con. R. M. Co. v. Lebanon M. Co., 9 Colo. 343;

Jennison v. Kirk, 98 U. S. 453, 459 *et seq.*;
St. John v. Kidd, 26 Cal. 264, 272.

This development work was called by miners "assessment work," and the performance of it a representation of the mine; that is, when the work had been performed for a given period, the claim was represented for that period.

Lindley on Mines (3rd Ed.), sec. 623.

The Act of May 10, 1872, made provisions for the performance of work annually on all claims theretofore or thereafter located.

Lindley on Mines (3rd Ed.), 623 *et seq.*

The purpose of the statute was to require every person who asserted an exclusive right to his claim to expend something of labor or value on it as evidence of his good faith.

Chambers v. Harrington, 111 U. S. 350, 353;
McCullock v. Murphy, 125 Fed. 147, 149.

It has been laid down in decided cases that work done for the purpose of discovering mineral or for the purpose of prospecting or developing the ground or claim, may be considered as assessment work, and be included within the $500 worth of improvements required by the

statute as a condition precedent to procuring patent.

U. S. v. Iron S. M. Co., 24 Fed. 568, 570;
Book v. Justice M. Co., 58 Fed. 106, 117;
Justice M. Co. v. Barclay *et al.*, 82 Fed. 554, 560;
Walton v. Wild Goose etc. Co., 123 Fed. 209, 218;
Lindley on Mines (3rd Ed.), sec. 629, page 1543.

It is the unqualified opinion of Judge Morrison in his work on mining rights that there is no authority in any of the mining statutes for the extension of the rule requiring annual assessment work upon placer claims.

On this subject he has stated himself as follows:

> "The question of annual labor on placers is a curious instance of the growth of law by following the first judicial oversight as a precedent until the wrong interpretation is firmly rooted as the true one. By no fair construction of the Act of 1872 could it be applied to anything except lode claims. The very amount of labor was fixed by the number of feet in length along the vein. But in 1876, in Chapman v. Toy Long, 4 Sawy. 28, 1 M. R. 497, placers were referred to incidentally as subject to the labor law. In Jackson v. Roby, 109 U. S. 440, without argument, the same *dictum* was expressed. Later in Carney v. Arizona Co., 65 Cal. 40, 2 P. 734, the point was definitely made as

to whether such labor was required on placers, and the Supreme Court of California, basing their opinion on the force of the general terms of sec. 2329,—a section enacted two years prior to the annual labor section,—sustain the affirmative of the proposition. In Sweet v. Webber, 7 Colo. 443, 4 P. 752, the precedent thus established was followed without reference to the original statute. Morgan v. Tillotson, 73 Cal. 520, 15 Pac. 88."

Morrison's Mining Rights (14th Ed.), 134.

Thus the law of assessment labor was applied to placer claims.

The earlier decisions were to the effect that assessment work upon placers was required upon each 20-acre claim; now $100.00 worth of work is sufficient to hold a 160-acre claim and $500.00 to patent it.

Merced Oil Co. v. Patterson, 162 Cal. 360.

It was also formerly held that assessment work upon a placer location must be done *within* the boundaries of the claim. Such is not now required.

"As water is essential to the development and working of placers, expenditures made in constructing ditches, flumes and pipe lines for the purpose of conducting water to the property will undoubtedly satisfy the law."

Lindley on Mines (2nd Ed.), p. 1174.

"Where a placer claim or group of claims held in common contain deposits of such character and extent that they can be most economically worked by means of a mining dredge and the owner of such claim or group has in good faith purchased and actually placed in good working order thereon a dredge, for the exclusive purpose of working such deposits, which dredge has not heretofore been used as the basis for patent for any other area, it is entitled to be regarded as a mining improvement, so far as that particular claim or group is concerned and to have its cost accredited thereto." (Syllabus.)

Gordon Gulch Bar Placer, 38 L. D. 28, 32.

In the case of oil placers we have what might be termed a composite of other mining claims. They are termed placers because they contain mineral "not in place," not fixed in rock. Still, it is well known that the natural habitat of this class of mineral, except in rare cases, is in stratified formations frequently great distances below the surface and it requires enormous expenditure and immense development in the nature of actual well boring and hazardous prospecting to determine the nature, extent and permanency of the deposit. In this respect, the deposit is very similar to blind lodes, which formed the basis of our tunnel site laws, and the location should thus be treated with the same leniency as tunnel

site locations,—hence the enactment of the "Five Claims Act."

In the case of lodes or ordinary placer locations a discovery may be made with little or no expense. In oil placers, a discovery is seldom made except at the end of enormous expenditures of time and money.

Mr. Justice Henshaw, in the case of McLemore v. Ex. Oil Co., 158 Cal. 561, says:

> "When congress enacted that locations could and should be made of public lands containing petroleum or other mineral oils under the laws relating to placer mining claims (Act Feb. 11, 1897, 29 Stats. at Large, Ch. 216, p. 526 [U. S. Comp. Stats. 1901, p. 1435]), the courts were at once confronted with serious difficulty in their endeavor to obey the congressional mandate, and fit the placer mining laws to the exigencies of oil locations, which, in their nature, were radically dissimilar. Thus it is well established, that the sole power of disposition and control of the public lands being vested by the Constitution of the United States in Congress (Const. U. S., Art. IV, Sec. 3), *congress could at any time change its policy in regard to those lands* so long as vested rights were not impaired. It was fully established also that a qualified person, who had made a valid location on a part of the public mineral domain (which valid location always included discovery), acquired vested rights which no change in congressional policy could affect or impair, but *per contra*, that a change in policy could impair the rights of one upon the public

> domain who had not acquired a valid location. As has been said, in the case of other minerals, discovery preceded the demarkation of the boundaries, the posting and recording of the notice. *In the case of oil, discovery, in the very nature of things, would rarely or never be made except at the end of much time and after the expenditure of much money, the discovery of oil involving the erection of a derrick, the installation of machinery and the laborious drilling of a well, frequently to a depth of three thousand feet or more.* If, therefore, the placer mining laws, which were declared by congress to be the only laws under which oil locations could be established, *were to be made of any practical benefit to the oil locator, it must be by permitting him to mark the boundaries of his location and post and record his notice, and by protecting him in possession while he was with diligence prosecuting the labor of digging his well to determine whether or not a discovery could be made.*"

The Five Claims Act was not called to the court's attention while it was considering the above case.

Recognizing the above, or a like good sense and reasoning, congress, in 1903, by virtue of the authority in it vested by the Constitution of the United States, passed the aforesaid "Five Claims Act," *which is the first and only act of congress dealing directly with work on placer mining claims*, and is by its terms pointed specially to oil placers, and recognizes the differ-

ence between the mode of occurrence of oil and other minerals and the difference between the laws governing other minerals, and those requisite for the encouragement and protection of the oil miner.

> "To constitute a discovery of oil, the law requires something more than conjecture, hope, or ordinary surface indications, such as the seepage of oil, and the geological formation of the country, indicating the likelihood of oil in paying quantities. *There must be an actual discovery of oil by boring beneath the surface.*"
>
> Miller v. Chrisman, 140 Cal. 440 (3rd Syllabus), see page 446.

It seems clear that such a discovery of oil as the Supreme Court of California has defined a discovery to be, *within* the boundaries of a claim, tends more to determine the oil-bearing character of that particular location than to any contiguous location, and the assessment work would be but a matter of pumping and saving oil. The expense of such a discovery is, without exception, very great. What then was the intention of congress in passing this act? It seems, to clearly place the expense of oil locations upon an equal footing with other mineral locations, and to enable the locator to hold five claims under the work and expense attached to one discovery; provided, that the conditions were such that the work and discovery could be

done upon one of five or fewer contiguous locations, where it would tend to the development or to determine the oil bearing character of such contiguous locations.

Therefore, we contend that the most reasonable interpretation of the "Five Claims Act" is:

That the term "*mining claim*" as used in said act is used in the abstract and is *synonymous with "location."*

Clearly the term, "annual assessment labor," used in said act in regard to oil placer claims, is not used in the same general sense as that term has heretofore been construed to have, but applies to work upon *unperfected* as well as perfected *oil* locations.

The evident great purpose of the act was to eliminate the expense of *separate* discovery work simultaneously upon five or less contiguous locations, by making and centralizing the work upon one, *when, by the work upon that one, the oil bearing character of the other claims of the group could be effectively determined,* without the great waste and expense incident to the sinking of prospect wells upon each claim of the group all at one time,—an unreasonable requirement.

The well being bored upon the "Sampson" claim, by the appellant, tends to develop, or at least *to determine, the oil bearing character of the contiguous "Rawley" location,* and is in full

compliance with said act, and has the effect of protecting the appellant in its claim to the Rawley claim as long as continued in compliance with the requirements of the act.

This, we believe, is not only the meaning intended by congress, but it is the meaning most consonant with sound reason. It is a construction which promotes the very purpose which congress had in view.

We direct attention to the salient features of the Five Claims Act:

1. First, to this language of the act:

"That where *oil lands* are *located*, * * * *as* placer mining claims," etc.

In this language is contained the fundamental conditions for the operation of the act.

It is not the effect of this provision merely that oil claims in a group of five may have the annual assessment work done upon one for the benefit of the group. In short, the unit of the group, under this act, is not *an oil claim*. If such were the language of the act it might be essential that before the act would operate upon a claim, there should be a discovery of oil so as to make a *perfected* oil claim.

On the contrary, the unit of the group contemplated by this act is "oil land * * * located *as* placer mining claim." Such an unit would not necessarily be a perfected claim and,

in view of the subsequent language of the act, to imply that it would be a perfected claim, with discovery thereon, before the act could be applicable, would be to import something into the act which is not contained in its terms.

We submit that the *full* import of this language is, that the lands shall be oil lands only in the sense in which they are pleaded in the respondent's complaints and in the appellant's amended answer in this action, to be oil lands; that is, they are lands adjacent to lands which are demonstrated to be oil lands; they are lands which are generally recognized to be oil lands; they are lands in the vicinity of which are outcroppings and evidence of those geological formations which are oil bearing in their character and so situated that those who are familiar with that department of geology are able to say, as business men, that the probability is, that if wells shall be sunk in such lands, oil may, as a good business venture, be produced therefrom.

The word "located,"—in our opinion and in the light of the authorities which we have heretofore cited,—in this act means simply delimited by having the boundaries ascertained and monumented on the ground, identified by having a notice of the location posted upon the land, and further claimed to the public by having such notice of location recorded in the manner cus-

tomary under the rules for recording mining claims.

The form of language, "oil lands located *as* placer mining claims," does not under either the very arrangement or the import of its terms, import that the perfected mining claim is the unit upon which the act is intended to operate.

Located *as* a placer mining claim means merely, located *after the fashion* of a placer mining claim. In short, it is contemplated by this act that the general subject matter in the way of mineral land to be exploited with reference to the provisions of this act is oil land. That it shall be located, that is, marked out and notified to the public in the customary ways as being claimed *as* oil lands, and that all of this shall be done after the manner of the location of placer mining ground as distinct from lode claims. And when these things concur with the other conditions which are made precedent by the act to the applicability of the act to any given case, then the unit upon which the act will operate is present, whether there shall have been discovery of oil in any of the five or smaller number of claims of the group, or not.

It has been long recognized by the decisions, commencing particularly with the case of Miller v. Chrisman, 140 Cal. 440, that the order in which the several things necessary to be done to effect the location of a perfected oil claim

shall happen, is immaterial, provided that they finally concur. That is to say, it makes no difference whether the claim shall first have its lines run and be monumented and then have the notice posted upon the ground and then recorded and then discovery made, or whether these acts shall actually take place in any one of the various other orders in which they may arrange themselves, it being only essential in the end that all of the things essential in the given case shall concur.

Moreover, it has been long recognized, particularly under the decisions in California, commencing with Miller v. Chrisman, that a claim so located, whether discovery shall have been made thereon or not, is property and the subject of conveyance and the passing of rights therein from one owner to another.

Moreover, it has been established by the courts, particularly the Supreme Court of California, as a doctrine of absolute necessity, prior to the existence of any statutory enactment upon the subject, that owing to the peculiar conditions under which oil occurs in nature, and owing to the enormous expenditure of time and money and the great hazard incident to the discovery and production of it, particularly in unexplored fields, possession accompanied by the tools and machinery appropriate for the development of an oil claim and actual operation there-

with on such oil claim, will entitle the operator to hold the same to the extent of his located, or delimited, boundaries, even prior to the discovery of oil therein.

It is our understanding that this doctrine has been held as one of necessity and without any express authority contained in any act of congress or state statute upon the subject.

The question before the court is purely and simply a question of statutory interpretation, having in mind all the time the pre-existing law, the nature and great diversity of the subject matter to which the mining laws of the United States are applicable, the mode of occurrence of petroleum oil as a mineral in nature, the purposes of the act, and the language adopted in and by the terms of the act for effectuating its purposes.

2. Second, we call attention to the condition contained in the proviso of the "Five Claims Act" that the assessment "labor will *tend to the development* or *to determine the oil bearing character* of such contiguous claims."

(a) By the very terms of this provision, it is made necessary that the work shall be such as to amount to the actual development of the contiguous claims. If it will *tend* to the development of the contiguous claims, it is sufficient to meet the requirements of this language.

It is well known that oil, being liquid, has been said to be "fugitive" in its character; so that a well sunk near the line of a given oil claim will draw oil from such adjacent claim. These facts were no doubt in the mind of those who drafted and enacted this law. Two or more claims may be actually developed by the sinking of a well upon one thereof, if their areas converge to a common point. Hence it is the provision that this act will be applicable if the conditions are such that assessment labor done upon one claim will tend to the *development* of adjacent claims.

(b) On the other hand, a well sunk upon one of a group of claims may, with perfect certainty, reach an oil producing formation therein which, with equal certainty, dips and goes through the other contiguous claims in the group, but yet be in such portion of the claim on which it is sunk as to be so remote from the other contiguous claims of the group that it could not be safely predicated of it, or established by any proof which would be deemed competent and sufficient for the purpose, that it would either *develop* or *tend* to develop any others of the contiguous claims of the group. This ever recurring condition in the oil fields was also evidently in the minds of those who drafted and enacted this law, because the act provides that if such assessment

"labor will *tend to determine the oil bearing character* of such contiguous claims," it will be applicable as assessment work upon all of the claims of the group, for all of the purposes of the act.

Thus it is not necessary that a well sunk by such assessment labor adjacent to the line should, or shall, actually determine the oil bearing character of the contiguous claim, although it might well do so; and it is frequently a deduction of such unmistakable certainty as to amount to a demonstration, and as that it has been recognized in recent decisions of the Land Department of the United States government, that a well sunk adjacent to the line of a claim may at once not only prove the mineral character of the contiguous claims, but amount to a discovery of oil therein and be recognized as such even for the purposes of application for patent.

But the language of the act goes much further even than is here stated. It is, that annual assessment labor, done upon one of a group of claims, shall be applicable for the purpose of holding the claims, if it "will *tend* to determine the *oil bearing character* of such claims." That is to say, if the conditions of the contiguous group of claims are such that it can be predicated on the discovery of an oil bearing formation in one claim of the group, by the driving of a well thereinto on such claim, that such oil

bearing formation extends into the other contiguous claims, then such assessment work will hold all of the group for the owner whether discovery shall have been made on any thereof or not.

3. As heretofore contended, it is utterly repugnant to the fundamental provisions of the act to contend, and certainly to hold, that in order that assessment labor may be applicable to a group of five claims, or less, under the provisions of this act, there must have been a discovery upon any claim of the group.

There is certainly no provision that even in the remotest degree tends to a holding, or conclusion, that there shall ever have been a discovery upon that one of the group upon which the work is being done. It is the very assumption in the act that that claim shall be protected because of the cumulative amount of work for all the claims of the group being done upon it; and it is certainly the very import of the language of the proviso that, if the doing of this assessment work under this act on one of the claims of the group will *tend* to *determine the oil bearing character* of the contiguous claims of the group, such oil bearing character will not need theretofore have been determined or known either by antecedent discovery of oil in the technical sense, or otherwise.

II.

Plaintiff in Error was in Possession of the Rawley Claim by its Lessees.

Plaintiff in error further contends that the decision of the Supreme Court of the state of California is erroneous, as pointed out in specification of error number IV above, because of the fact that plaintiff in error was not only in possession of the Rawley claim by its possession and sinking of well on the contiguous Sampson claim, but at the time of the pretended location of the alleged Schley claim by Smith and others, and for more than two months prior thereto, appellant was in the actual possession and occupancy of said Rawley claim and actively engaged in the development of same by and through its lessees, Mitchell and Slocum and their assigns, by the work they had begun in November or December, 1909; by their continuation thereof; by their expending money in good faith in shipping tools and machinery by rail and wagon road to said distant and difficult of access claim, and by their every act, all of which were indicative of possession and development in good faith. [Record pp. 20, 38, 39, 40, 42, 43, 48, 52, 56, 67.]

> "A prior locator of a placer mining claim, the location of which had never been perfected by discovery, and which he had not voluntarily abandoned, did not forfeit his location by the mere failure to prosecute

development work, and had the right to subsequently enter into possession of the land and do discovery work thereon at any time he could do so without transgressing any right obtained by another." (Ninth syllabus.)

Borgwardt v. McKittrick Oil Co., 164 Cal. 650, see p. 662.

Also see

Revised Statutes U. S., sec. 2324.

A party may be in legal possession, though not personally on the land at the time of a stranger's entry.

Davis v. Dennis (Wash.), 85 Pac. 1079, 1080.

"Where the locator is in possession under his location, and *actively engaged at work* through his lessees, or *otherwise, and expending money for the purpose of discovering oil, his rights cannot be forfeited to third parties who attempted to make locations under such circumstances.*"

Weed v. Snook, 144 Cal. 439, 445.

The Supreme Court of Wyoming, in the case of Phillips v. Brill (17 Wyo. 26), 95 Pac. 856, 859, says:

"At that time they performed all the necessary acts of location except that of making discovery. The surrounding indications were unquestionably sufficient to justify them in prospecting the premises with the expectation of finding oil or gas

underneath the surface. Having staked the ground, put up the usual notice, and recorded the claim, the defendants had the right to take actual possession, and continue in such possession, at least for a reasonable time, while diligently at work thereon exploring the grounds for the purpose of discovery. The previous acts of location would indicate not only the extent of surface intended to be appropriated, but the extent of such possession, and the locators would be protected against the forceful, fraudulent, surreptitious, or clandestine entry or intrusions of others. * * * A delay in taking the necessary possession, to prevent a valid location by intruders, would not alter the situation, provided that at the commencement of such possession there were no intervening rights. * * * From the time of such possession, therefore, they were actually prospecting the claim under such circumstances that, upon making discovery in the well being drilled, it might complete and validate it. It follows that, if such possession began before the plaintiffs made their location, the ground was not vacant and unoccupied, and that location would not have been valid. It is a general rule that a mining location, to be valid, must be good when made, and that a right cannot be initiated by a trespass."

Roadways are necessities, and when such have been constructed on the claim, for the manifest purpose of assisting in the development of the

mine, such as transporting material and machinery to the mine, is a legitimate expenditure.

Doherty v. Morris (Colo.), 28 Pac. 85, 86;

Sexton v. Washington Co. (Wash.), 104 Pac. 614, 616;

Emily Lode, 6 L. D. 220, 222.

We here point out that in the years 1909 and 1910 more than $2400.00 worth of actual improvement was done by appellant through its lessees and sub-lessees upon the Rawley claim before any pretense of doing work thereon is claimed by the respondent, whose very earliest claim of the doing of any act pointing to development was the work done by O. J. Stowe, commencing in October, 1910. But this expenditure and work cannot avail the respondent because:

First: All the $2300.00 worth of material then on said claim was placed thereon by appellant for the development thereof through its sublessees, Reynolds and Mann, responsive to the obligations of their lease. [Record pp. 38, 42, 43, 52, 53.]

Second: Appellant did not at any time relinquish, or to any extent surrender, any right or claim which it had acquired to the Rawley claim by reason of the placing thereon by its said sublessees of said materials for the development of the Rawley claim. [Record pp. 65, 68.]

Third: Although said improvements were purchased from Reynolds and Mann and thus filched away from the appellant secretly and entirely without its knowledge, yet those clandestine and unwarranted acts were known to the respondent, were connived at by him particularly through his agent, J. P. Brunton, and others; so that to hold that the respondent acquired any right to said claim by such method and means through Stowe as its operative, would be tantamount to allowing an already acquired and vested right of the appellant to be taken away from it without its knowledge or consent. [Record pp. 36, 44, 53.]

Fourth: The very material which Stowe used to begin his operations was that placed on the Rawley claim by Reynolds and Mann, as sublessees of the appellant, for carrying out their obligations to the appellant under the lease; and since neither the respondent nor Stowe had placed any such materials on said land with which to operate thereon, it was first necessary that they should work a fraud against the appellant by getting those materials away from the appellant's sub-lessees before the respondent or any of his representatives should begin operation. [Record pp. 36, 40, 43, 45, 47.]

Fifth: This fraud was secretly and clandestinely effected without the appellant's knowl-

edge or consent, but the very moment it was known to the appellant's superintendent in that field, B. B. Grinnell, which was the first information on the subject had by the appellant, directly or indirectly,—that moment the appellant took steps to carry on the development of that claim without lapse of a single instant in its diligence—ordered material, put men in the field and on the work and went to the development of said property, expending thereon probably $1,000.00, and continued thereon until restrained and finally permanently enjoined by the order of the court in this case. [Record pp. 65, 68, 21.]

> "Two locations cannot legally occupy the same place at the same time."
>
> *Porter v. Tonopah Co.*, 133 Fed. 756, 758.

> "No right can be initiated on government land which is in the actual possession of another by a forcible, fraudulent or clandestine entry thereon, for the purpose of locating it as a mining or other claim." (Fifth syllabus.)
>
> *Nev. Sierra Oil Co. v. Home Oil Co.*, 98 Fed. 673, 680.

Also see

Atherton v. Fowler, 96 U. S. 513, 520;
Belk v. Meagher, 104 U. S. 279, 284;
Miller v. Chrisman, 140 Cal. 440, 449.

For the foregoing reasons the ruling, decision and judgment of the Supreme Court of the state of California were and are erroneous in each of the respects hereinabove specified, and should be reversed.

Respectfully submitted,

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JAN 16 1919
JAMES D. MAHER,
CLERK.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

No. 8.

OCTOBER TERM, 1918.

Union Oil Company of California, a Corporation,
Appellant and Plaintiff in Error,

vs.

S. R. Smith,
Respondent and Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Supplemental Brief of Plaintiff in Error.

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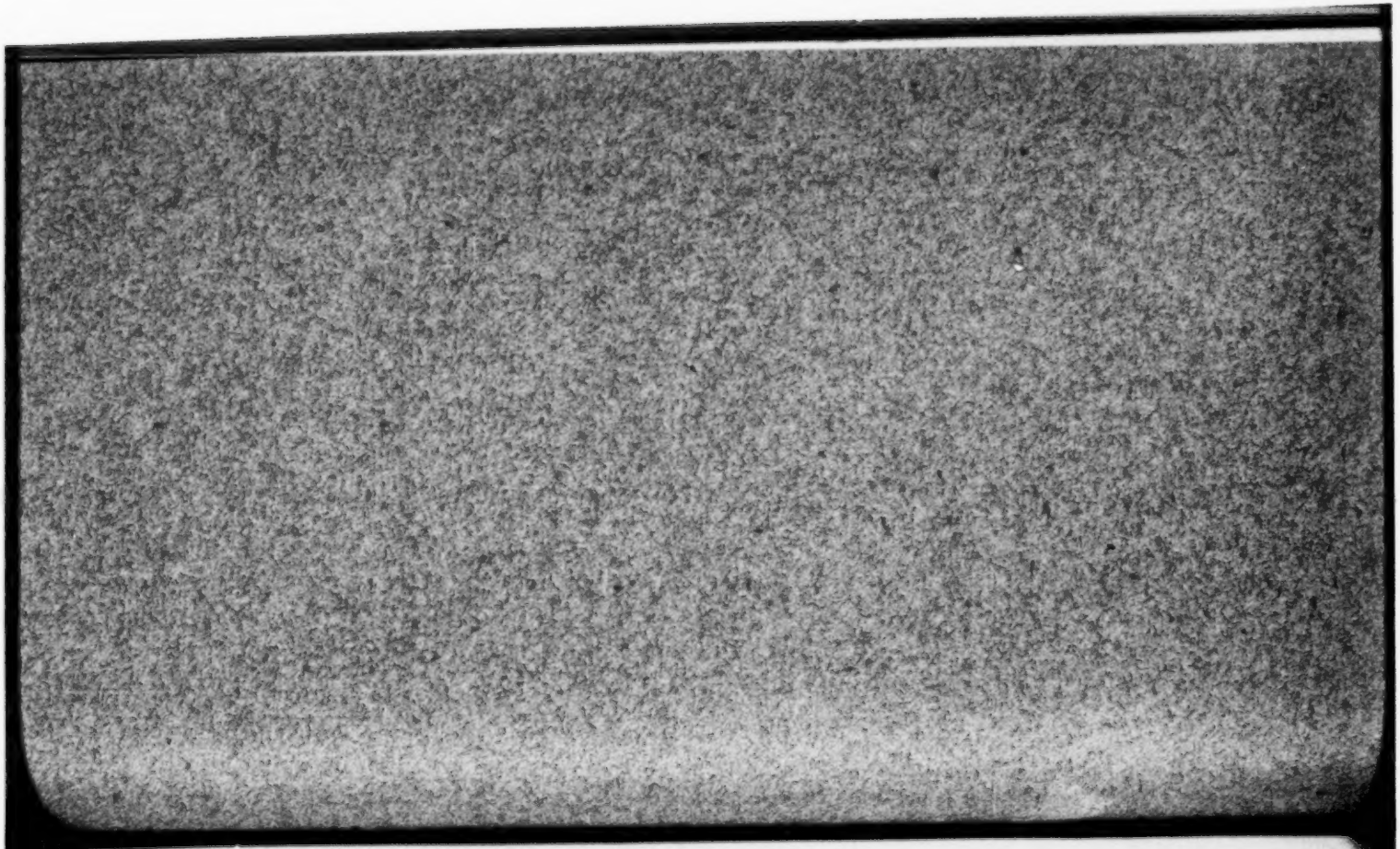

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Request.

The present case involves the construction of a federal statute, and we understand it is the duty of the court in such cases to search out

the true meaning of the law, and to permit the spirit and reason to prevail over the letter.

U. S. v. Mulvay, 232 Fed. 513;
U. S. v. N. A. Oil Co., 242 Fed. 728;
Holy Trinity v. U. S., 143 U. S. 457.

As the spirit and reason of this "Five Claims" Act can better be ascertained from an examination of the report of the committees of both houses of Congress at the time the act was submitted to Congress for its passage, which report has been called to our attention since the filing of our brief herein, we respectfully request that we be permitted to present the same, in this, a supplement to our brief filed herein.

Report of Committee on Mines and Mining, Recommending the Passage of the Five Claims Act.

The view of the law as argued and contended for in our brief filed in this case coincides exactly with the intention of Congress in passing the "Five Claims" Act (of February 12, 1903, 32 Stats. at L. 825), which is shown conclusively by the report of the committee on mines and mining of the House of Representatives, concurred in by the committee on mines and mining of the Senate, recommending the passage of said "Five Claims" Act.

That report is as follows:

"The report of the House of Representatives following is hereby made and adopted as the report of this committee:

"The committee on mines and mining to whom was referred the bill (H. R. 15198) defining what shall constitute and providing for assessments on oil mining claims, have had the same under consideration and report the bill with the recommendation that the same do pass with the following amendments:

"In line 9 strike out the words 'benefit or,' and after the word 'development' in the same line insert 'or to determine the oil-bearing character.'

"This bill as amended provides that where oil claims are located under the provisions of the Revised Statutes as placer mining claims, the annual assessment labor may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all, provided that the labor will tend to the development or to determine the oil-bearing character of such contiguous claims. The law now requires that upon each mining claim there shall be performed each and every year at least one hundred dollars' worth of work. The courts have held with reference to lode-mining claims that this annual labor may be done upon any one of a group of mining claims, provided the said work tends to benefit the entire group, but the land department of the government seems to be of the opinion that the annual labor upon placer-mining claims must be done upon each of the claims.

"There is good reason for this holding when applied to the ordinary placer claim containing deposits of gold, because in such case the gold lies upon the surface or near the surface, and general development work being upon and near the surface does not tend to benefit other claims than the one upon which the work is actually done, but in the case of oil-mining claims the situation is different. It is necessary to bore wells for great depths in order to determine whether or not oil exists in paying quantities. These wells are expensive, and it is the opinion of the committee that the industry itself will be more benefited by permitting the owner to spend his means in sinking *a single well in order to demonstrate the possibilities of the property* than it would be to require him to distribute his means among several claims. In other words, it is better that $500 should be spent in one place until the character of the oil deposit has been demonstrated, than it is to require the same amount of money to be spent in five different places." (Italics ours.)

The spirit and reason of the act, as expressed in the foregoing report, have been followed and adopted in the following recent opinions of the United States Circuit Court of Appeals:

U. S. v. Grass Creek Oil Co., 236 Fed. 481, 487;

Consol. Mut. Oil Co. v. U. S., 245 Fed. 521;

and by the following District Court:

U. S. v. North American Oil Co., 242 Fed. 723.

The act under construction in these cases was what is commonly known as the "Pickett Act," which provides for the withdrawal of mineral lands from entry, but which contains the following proviso:

> "Provided that the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is the *bona fide* occupant or claimant of oil- or gas-bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work."

In *Consolidated Mutual Oil Company v. United States, supra*, on page 527, His Honor, Judge Ross, in rendering the majority opinion, says:

> "By that act, which was obviously a remedial statute, and therefore to be liberally construed to effect its object, Congress expressly gave to the good-faith occupant or claimant of either oil or gas-bearing lands, who, at the date of the act, was 'in diligent prosecution of work leading to discovery of oil or gas,' a status. That the appellants were, at the time of the passage of the act, in the actual and exclusive possession of the lands here in controversy and in diligent prosecution of work on one of two contiguous claims for

the benefit of both, as well as other contiguous ones, in the effort to discover oil thereon, which continuous work resulted in the discovery of oil in each of the quarter sections here involved in large quantities, is clearly shown, and that the appellants continued from the date of the passage of said act 'in diligent prosecution of said work' is undisputed. We therefore regard it as clear that the appellants also come within the express provisions of the Act of June 25, 1910."

The court, continuing on page 528, says:

"In deciding adversely a much stronger case for the government than are the present ones, the Circuit Court of Appeals of the Eighth Circuit, in the recent case of *United States v. Grass Creek Oil & Gas Co. and Ohio Oil Co.*, 236 Fed. 481, 487, 149 C. C. A. 533, 539, in speaking of the Act of June 25, 1910, said:

" 'It is claimed that actual drilling operations were not commenced until July 1, 1914, on the northwest quarter, and on July 31, 1914, on the east half of the southwest quarter, and that until the actual drilling was begun there was no prosecution of work within the meaning of the Act of Congress. We are of the opinion that this is too narrow a view to take of this statute. The enactment of this proviso by Congress could have had but one object in view, and that was to protect the rights of all persons who, at the date of an order of withdrawal, are occupying or claiming oil-bearing lands in good faith, for the purpose of acquiring them under the laws of the United States, and are diligently prosecuting the work leading to the dis-

covery of oil. Before the enactment of this statute discovery of the mineral was essential to make a location. As frequently—in fact, in most instances—prospecting was necessary in order to determine whether oil or gas are on the public lands, and large sums of money were necessarily expended to ascertain this fact, Congress by this proviso in the Act of 1910 extended its protecting arm to those acting in good faith in an effort to ascertain whether there was oil or gas under them. In our opinion, when a citizen of the United States in good faith enters upon public land for the purpose of discovering oil or gas, takes possession of the land by placing a caretaker thereon while he is taking proper steps to obtain the material necessary for the work of constructing the camps, enters into contracts for drilling, acting as expeditiously as possible in erecting camps and preparing for the drilling, spends money and enters into contracts whereby he becomes liable for sums of money to prosecute the work leading to the discovery of oil or gas, and as soon as it is possible, by the exercise of proper diligence, begins the work of drilling, and continues it diligently and expeditiously until oil is discovered in commercial quantities, he is within the protection of this proviso.'"

In the opinion of District Judge Bean, rendered in *United States v. North American Oil Co.*, 242 Fed., on page 727, we find the following:

"To bring an occupant or claimant of oil or gas-bearing lands within the provisions of the Pickett Act, it is not necessary that he was engaged in actual drilling for

> oil or gas on a particular tract at the date of withdrawal * * * or necessarily that work was then being performed upon the identical claim upon which discovery must ultimately be made in order to make location. It is enough if reasonable effort was being made at that time, indicating a *bona fide* intention to complete the work of discovery on the particular claim with all practical expedition; such intention being manifested by the doing of physical act or acts which had a direct tendency to facilitate the exploration for and discovery of oil or gas thereon, although drilling had not commenced and the work may not have been on such claim."

Thus it is recognized by the District Court and Circuit Court of Appeals, and also by Congress in the passage of said act, that the drilling of a well on one of two or more (up to five) contiguous claims may, by disclosing the formation, materially aid in subsequent drilling, and lessen the expense of developing the contiguous claims, and thus benefit and apply on and to all of the group.

We, therefore, submit that our contention as to the true scope and purpose of the "Five Claims Act" is supported by the history of the bill and by the nature of the subject to which it applies.

Respectfully submitted,

LEWIS W. ANDREWS,

T. O. TOLAND,

A. V. ANDREWS,

Attorneys for Plaintiff in Error.

UNION OIL COMPANY OF CALIFORNIA *v.* SMITH.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 8. Submitted November 13, 1918.—Decided March 31, 1919.

In order to create valid rights or initiate a title as against the United States under the mining laws, a discovery of mineral within the location is essential. P. 346.

For the purpose of exploring for mineral, a qualified person who has entered peaceably upon vacant public land is treated as a licensee or tenant at will of the United States and allowed, as of necessity, a right of possession, the extent of which, *i. e.*, whether confined to *pedis possessio* or coterminous with the boundaries of his inchoate location,—is not here decided. *Id.*

The right of possession before discovery may be maintained only by continued actual occupancy by a qualified locator or his representatives engaged in persistent and diligent prosecution of work looking to the discovery of mineral. P. 348.

Discovery may follow the marking and recording of a mining claim, and perfect the location as of the time of discovery, provided no rights of third parties have intervened. P. 347.

The terms "assessments," "annual assessment labor," and "assessment work," in acts of Congress as in the practice of miners, have nothing to do with the locating or holding of a claim before discovery, but refer to the annual labor required by Rev. Stats., § 2324,

as a condition subsequent, to preserve the exclusive right of possession of a perfected location, based upon prior discovery. P. 350.

The Act of February 12, 1903, c. 548, 32 Stat. 825, providing that the annual assessment labor may be done upon any one of a group of contiguous oil-land locations not exceeding five, in the same ownership, provided it will tend to their development or to determine their oil-bearing character, refers to locations based each on a discovery of oil within its limits, and evinces no purpose to break down in any way the distinction between the mere *pedis possessio* of the prospector before discovery and the rights resulting from discovery and perfected location. P. 351.

Where two contiguous tracts are claimed by the same party under oil-land locations without discovery of mineral, drilling a well on one of them, for the purpose of discovering oil, even though it tends to determine the oil-bearing character of the other also, will not avail to hold the other against an intervening qualified claimant who enters upon it peaceably and diligently prosecutes discovery work on his own account. *Id.*

166 California, 217, affirmed.

THE case is stated in the opinion.

Mr. Lewis W. Andrews and *Mr. Thomas O. Toland* for plaintiff in error. *Mr. A. V. Andrews* was on the brief:

The Act of February 12, 1903, is remedial and should be liberally construed.

It was passed to relax the stringent rule of interpretation respecting discovery (*Miller* v. *Chrisman*, 140 California, 440), and not permitting claims to be held by annual labor, which was so burdensome and expensive as applied to oil lands. Its purpose was to encourage the oil miner to go out upon lands recognized as oil lands, locate his five or less claims by posting his notices, setting his monuments and recording his notices, and thereby become entitled to sink a well upon one of those claims without starting in upon the others, and to be allowed to apply the $500.00 worth of work upon that one claim for the benefit of the five, provided, that there is but one

ownership of the five and that they are so situated that the sinking of the well upon one will tend to develop, or to prove the oil-bearing character of the remaining claims of his group. There was no need of remedial legislation in cases where discovery had been made on the claims, because such a discovery itself establishes their oil-bearing character. The mining law requires assessment work as an evidence of good faith. *Chambers* v. *Harrington*, 111 U. S. 350, 353; *McCullock* v. *Murphy*, 125 Fed. Rep. 147, 149. Work done for discovering minerals or in prospecting or developing the claim may be included in the expenditure required as a condition to acquiring patent. It is doubtful if there was any authority in the statute for extending the requirement of annual work to placer claims. Morrison's Mining Rights, 14th ed., 134. For placer locations, such work need not be done within the boundaries of the claim. Lindley on Mines, 2nd ed., p. 1174; *Gordon Gulch Bar Placer*, 38 L. D. 28, 32.

Oil, except in rare cases, lies in stratified formations, often at great depth, requiring vast effort and expenditure and much hazard to reach the deposit and determine its nature and permanency. *McLemore* v. *Express Oil Co.*, 158 California, 561. In this respect it is like blind lodes, which gave occasion to the tunnel site laws, and oil locations should be treated as leniently as tunnel locations—hence this act. The term "mining claim" is used here in the abstract, synonymously with location. "Annual assessment labor" done upon one of five or fewer contiguous locations, where it would tend to the development or to determine the oil-bearing character of such contiguous locations, applies to work upon unperfected as well as perfected oil locations.

The great purpose was to eliminate the expense of separate discovery work simultaneously upon five or less contiguous locations, by centralizing the work upon one,

when by that the oil-bearing character of the other claims could be effectively determined. The unit of the group contemplated is "oil land . . . located *as* placer mining claims." Such a unit would not necessarily be a perfected claim and, in view of the subsequent language of the act, to imply that it must be such, with discovery thereon, before the act could be applicable, would be to import something into the act which is not contained in its terms.

We submit that the full import of this language is, that the lands shall be oil lands only in the sense in which they are pleaded in the respondent's complaint and in the appellant's amended answer in this action, to be oil lands; that is, lands adjacent to lands which are demonstrated to be oil lands; recognized to be oil lands; in the vicinity of which are outcroppings and evidence of those geological formations which are oil-bearing in their character, and so situated that those who are familiar with that department of geology are able to say, as business men, that probably, if wells shall be sunk in such lands, oil may, as a good business venture, be produced therefrom.

The word "located" means simply delimited by having the boundaries ascertained and monumented on the ground, identified by having a notice of the location posted upon the land, and further proclaimed to the public by having such notice of location recorded in the manner customary under the rules for recording mining claims.

It has been long recognized, particularly under the decisions in California, commencing with *Miller* v. *Chrisman*, that a claim so located, whether discovery shall have been made thereon or not, is property and the subject of conveyance and the passing of rights therein from one owner to another.

Two or more claims may be actually developed by one

well. And, owing to geological conditions, a well on one may determine the oil character of the other; under the recent decisions of the Land Department it may even amount to a discovery of oil in the other.

Plaintiff in error was not only in possession of the Rawley claim by its possession and sinking of well on the contiguous Sampson claim, but at the time of the pretended location of the alleged Schley claim by Smith and others, and for more than two months prior thereto, was in the actual possession and occupancy of the Rawley and actively engaged in its development through lessees and their assigns, by the work they had begun in November or December, 1909; by their continuation thereof; by their expending money in good faith in shipping tools and machinery by rail and wagon road to the claim, and by their every act, all of which were indicative of possession and development in good faith. A party may be in legal possession, though not personally on the land at the time of a stranger's entry. *Davis* v. *Dennis*, 43 Washington, 54. And see *Weed* v. *Snook*, 144 California, 439, 445; *Phillips* v. *Brill*, 17 Wyoming, 26.

Roadways are necessities, and when such have been constructed on the claim, for the manifest purpose of assisting in the development of the mine, such as transporting material and machinery to the mine, it is a legitimate expenditure. *Doherty* v. *Morris*, 17 Colorado, 105; *Sexton* v. *Washington Co.*, 55 Washington, 380; *Emily Lode*, 6 L. D. 220, 222.

Counsel further claimed that in the years 1909 and 1910 more than $2400.00 worth of actual improvement was done by defendant through its lessees and sub-lessees upon the Rawley claim and that the earliest work claimed by the plaintiff was not only later, but, for several reasons assigned, could not enure to his benefit.

No appearance for defendant in error.

MR. JUSTICE PITNEY delivered the opinion of the court.

This case presents, for the first time in this court, the question of the meaning and effect of an Act of Congress approved February 12, 1903, c. 548, 32 Stat. 825, which reads as follows:

"An Act Defining what shall constitute and providing for assessments on oil mining claims.

"*Be it Enacted, etc.*, That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: *Provided*, That said labor will tend to the development or to determine the oil-bearing character of such contiguous claims."

Smith, now defendant in error, being in possession of a placer mining claim known as the "Schley claim," comprising a tract of 160 acres of land in the State of California, part of the public domain of the United States, under a location notice posted and recorded by himself and seven other qualified persons who afterwards conveyed their interests to him, and being engaged in the diligent prosecution of work for the purpose of finding oil upon the claim, brought an action in a California state court to determine adverse claims, making the Union Oil Company of California defendant.

Defendant asserted a superior right of possession under a mineral land location of the same ground under the name of the "Rawley claim," made by eight qualified associates in the year 1883, many years before plaintiff's location. No discovery of oil or other minerals had ever been made upon the ground by either of the claimants or by any other person. But at the time plaintiff and his associates located it defendant, although not then

actually occupying this ground, was in actual occupation of a contiguous claim of 160 acres known as the "Sampson claim" upon which it then was drilling and afterwards continued to drill a well for the discovery of oil, the well being 1,000 feet distant from the boundary line of the disputed claim. Defendant claimed the right of possession of five contiguous claims, including the "Rawley-Schley" and the "Sampson," under locations regularly made in all respects save discovery. Defendant pleaded and proved these facts, and also introduced evidence warranting a finding that its boring work on the "Sampson claim" tended to determine the oil-bearing character of the "Rawley-Schley claim."

It was and is defendant's contention that by virtue of the Act of 1903 one who has acquired the possessory rights of locators before discovery in five contiguous claims taken up as oil-bearing lands may preserve and maintain an inchoate right to all of them by means of a continuous actual occupation of one, coupled with diligent prosecution in good faith of a sufficient amount of discovery work thereon, provided such work tends also to determine the oil-bearing character of the other claims.

The superior court of the county and, on appeal, the Supreme Court of the State overruled this contention and gave judgment in favor of the plaintiff (166 California 217), and the case was brought here by writ of error under § 237, Judicial Code, prior to the amendment of September 6, 1916, c. 448, 39 Stat. 726.

It will be observed that both parties are in the position of prospectors or explorers upon the public domain—locators without discovery; and, in order to appreciate correctly what effect, if any, the Act of 1903 has upon their rights, it is important to have in mind what is meant by "annual assessment labor," and the part it plays in the operations of miners under the mining laws of the United States.

By § 2319, Rev. Stats., all valuable mineral deposits in lands belonging to the United States are declared to be "free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States." By § 2320 it is declared: "No location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located." By § 2322 locators of mining locations on the public domain "so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins," etc. By § 2324: "The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. . . . On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year

thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location." Section 2325 and sections following permit a patent to be obtained for a mineral claim, and regulate the procedure. By § 2325 the applicant for patent is required (among other things) to file "a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors"; and, upon his compliance with this and other requirements, if after publication of notice for sixty days no adverse claim is filed, or (§ 2326) such claim, having been filed, has proceeded to adjudication in a court of competent jurisdiction with result favorable to the applicant, upon a payment of five dollars per acre and proper fees a patent is issued for the claim or such portion thereof as has been decided to be in the rightful possession of the applicant. By § 2329 placer claims are made subject to entry and patent under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims; the purchase price of placer claims being fixed, by § 2333, at two dollars and fifty cents per acre.

Under this legislation petroleum for many years was regarded as a mineral, although not specially mentioned as such, and claims to oil lands were disposed of by the Land Department under the provisions of law relating to placer claims, with a single exception afterwards overruled. *Union Oil Co.*, 23 L. D. 222, decided August 27,

1896; *Union Oil Co., (On Review)*, 25 L. D. 351, decided November 6, 1897. It was in order to obviate the effect of the former of these two decisions that Congress passed the Act of February 11, 1897, c. 216, 29 Stat. 526, which declared: "That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims"; with a proviso saving petroleum land theretofore filed upon, claimed or improved as mineral but not yet patented. See House Rep. No. 2655, 54th Cong., 2d sess.; 29 Cong. Rec., Pt. 2, p. 1409; *Burke* v. *Southern Pacific R. R. Co.*, 234 U. S. 669, 678.

Aside from the suggested effect of the Act of 1903, it is clear that in order to create valid rights or initiate a title as against the United States a discovery of mineral is essential. Section 2320, Rev. Stats.; *Waskey* v. *Hammer*, 223 U. S. 85, 90. Nevertheless, § 2319 extends an express invitation to all qualified persons to explore the lands of the United States for valuable mineral deposits, and this and the following sections hold out to one who succeeds in making discovery the promise of a full reward. Those who, being qualified, proceed in good faith to make such explorations and enter peaceably upon vacant lands of the United States for that purpose are not treated as mere trespassers, but as licensees or tenants at will. For since, as a practical matter, exploration must precede the discovery of minerals, and some occupation of the land ordinarily is necessary for adequate and systematic exploration, legal recognition of the *pedis possessio* of a *bona fide* and qualified prospector is universally regarded as a necessity. It is held that upon the public domain a miner may hold the place in which he may be working against all others having no better right, and while he remains in possession, diligently working towards discov-

ery, is entitled—at least for a reasonable time—to be protected against forcible, fraudulent, and clandestine intrusions upon his possession. *Zollars* v. *Evans*, 5 Fed. Rep. 172, 173; *Crossman* v. *Pendery*, 8 Fed. Rep. 693, 694; *Johanson* v. *White*, 160 Fed. Rep. 901; *Hanson* v. *Craig*, 161 Fed. Rep. 861, 863; 170 Fed. Rep. 62, 65; *Gemmell* v. *Swain*, 28 Montana, 331, 335; *New England &c. Oil Co.* v. *Congdon*, 152 California, 211; *Whiting* v. *Straup*, 17 Wyoming, 1, 19, 23; *Phillips* v. *Brill*, 17 Wyoming, 26, 38.[1]

And it has come to be generally recognized that while discovery is the indispensable fact and the marking and recording of the claim dependent upon it, yet the order of time in which these acts occur is not essential in the acquisition from the United States of the exclusive right of possession of the discovered minerals or the obtaining of a patent therefor, but that discovery may follow after location and give validity to the claim as of the time of discovery, provided no rights of third parties have intervened. *Creede & Cripple Creek Mining Co.* v. *Uinta Tunnel Mining Co.*, 196 U. S. 337, 345, 348-352; *Weed* v. *Snook*, 144 California 439, 443.

In the California courts the right of a locator before discovery while in possession of his claim and prosecuting exploration work is recognized as a substantial interest, extending not only as far as the *pedis possessio* but to the limits of the claim as located; so that if a duly qualified person peaceably and in good faith enters upon vacant lands of the United States prior to discovery but for the purpose of discovering oil or other valuable mineral deposits, there being no valid mineral location upon it, such person has the right to maintain possession as against

[1] Two recent acts of Congress contain recognition of the status of a *bona fide* occupant of oil-bearing lands in the public domain prior to discovery. Act of June 25, 1910 (36 Stat. 847, c. 421, § 2, first proviso); Act of March 2, 1911 (36 Stat. 1015, c. 201). See *Consolidated Mutual Oil Co.* v. *United States*, 245 Fed. Rep. 521, 524, 527, 529.

violent, fraudulent, and surreptitious intrusions so long as he continues to occupy the land to the exclusion of others and diligently and in good faith prosecutes the work of endeavoring to discover mineral thereon. *Miller* v. *Chrisman*, 140 California, 440, 447 (case affirmed 197 U. S. 313); *Weed* v. *Snook*, *ubi supra*; *Merced Oil Mining Co.* v. *Patterson*, 153 California, 624, 625; 162 California, 358, 361; *McLemore* v. *Express Oil Co.*, 158 California, 559, 562.

To what extent the possessory right of an explorer before discovery is to be deduced from the invitation extended in § 2319, to what extent it is to be regarded as a local regulation of the kind recognized by that section and the following ones, and to what extent it derives force from the authority of the mining States to regulate the possession of the public lands in the interest of peace and good order, are questions with which we are not now concerned. Nor need we stop to inquire whether the right is limited to the ground actually occupied in the process of exploration, or extends to the limits of the claim. These questions and others that suggest themselves are not raised by the present record, which concerns itself solely with the rights asserted by the defendant under the Act of 1903. Whatever the nature and extent of a possessory right before discovery, all authorities agree that such possession may be maintained only by continued actual occupancy by a qualified locator or his representatives engaged in persistent and diligent prosecution of work looking to the discovery of mineral.

But, by the provisions of the Revised Statutes above cited, a discovery of mineral by a qualified locator upon unappropriated public land initiates rights much more substantial as against the United States and all the world. If he locates, marks, and records his claim in accordance with § 2324 and the pertinent local laws and regulations, he has, by the terms of § 2322, an exclusive right of pos-

session to the extent of his claim as located, with the right to extract the minerals, even to exhaustion, without paying any royalty to the United States as owner, and without ever applying for a patent or seeking to obtain title to the fee; subject, however, to the performance of the annual labor specified in § 2324, for upon his failure to do this the claim is open to relocation by others at any time before resumption of work upon it by the original locator.

If not content to rest upon the right conferred by § 2322, the qualified locator may obtain a patent for his claim by complying with the conditions prescribed by §§ 2325 and 2326.

But, even without patent, the possessory right of a qualified locator after discovery of minerals upon the claim is a property right in the full sense, unaffected by the fact that the paramount title to the land is in the United States (Rev. Stats., § 910), and it is capable of transfer by conveyance, inheritance, or devise. *Forbes* v. *Gracey*, 94 U. S. 762, 763, 767; *Belk* v. *Meagher*, 104 U. S. 279, 283, 285; *Del Monte Mining Co.* v. *Last Chance Mining Co.*, 171 U. S. 55, 78; *Elder* v. *Wood*, 208 U. S. 226, 232.

Actual and continuous occupation of a valid mining location based upon discovery is not essential to the preservation of the possessory right. The right is lost only by abandonment, as by non-performance of the annual labor required by § 2324. *Belk* v. *Meagher*, 104 U. S. 279, 283, 284; *Black* v. *Elkhorn Mining Co.*, 163 U. S. 445, 450; *Farrell* v. *Lockhart*, 210 U. S. 142, 147; *Bradford* v. *Morrison*, 212 U. S. 389, 394.

After this brief review of the mining laws there is little danger of mistaking the true intent and meaning of the Act of Congress of February 12, 1903. Title thirty-two, chapter six, Revised Statutes, therein referred to, embraces the sections we have cited. And

it is not to be doubted that the terms "assessments" and "annual assessment labor" refer to the annual labor required by § 2324, that being commonly called by miners the "annual assessment" or the "assessment work," and so described in many judicial opinions and in at least two acts of Congress, passed respectively November 3, 1893, c. 12, 28 Stat. 6, and July 2, 1898, c. 563, 30 Stat. 651. See *El Paso Brick Co.* v. *McKnight*, 233 U. S. 250, 255, 256, 258.

And it is important to observe that in these acts of Congress, as in the practice of miners, "assessment work" had nothing to do with locating or holding a claim before discovery. On the contrary it was the condition subsequent prescribed by Congress to be performed in order to preserve the exclusive right to the possession of a valid mineral land location upon which discovery had been made. *McLemore* v. *Express Oil Co.*, 158 California, 559, 563. Hence the declaration in the Act of 1903 that where oil lands are located as placer mining claims "the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person," indicates simply the legislative purpose that the necessary assessment work if done upon one of the group should have the same effect as if properly distributed among the several claims; that is to say, the effect of preserving the exclusive right of possession and enjoyment conferred by § 2322 with respect to unpatented claims based upon a previous discovery of oil.

"Group assessment work" did not originate with the Act of 1903. From an early period the economy of operating contiguous mines or claims by a single system was recognized. In § 5 of the Act of May 10, 1872, c. 152, 17 Stat. 92, now § 2324, Rev. Stats., it was provided with respect to the annual labor that "where such claims are held in common such expenditure may be made upon any one claim." Questions as to the precise meaning of

this naturally arose, and it was determined that it applied only to contiguous claims, and that the work must be done for the common benefit or for the purpose of developing all the claims. *Smelting Co.* v. *Kemp*, 104 U. S. 636, 655; *Jackson* v. *Roby*, 109 U. S. 440, 444; *Chambers* v. *Harrington*, 111 U. S. 350, 353; *Anvil Hydraulic Co.* v. *Code*, 182 Fed. Rep. 205, 206.

It is plain that the draftsman of the Act of 1903 had this settled rule in mind, for the bill as introduced, with enacting clause in the same form as finally passed, had this proviso: "*Provided*, That said labor will benefit or tend to the development of such contiguous claims." By committee amendment in the House the words "benefit or" were struck out, and after the word "development" the following were inserted: "or to determine the oil-bearing character," presumably regarded as peculiarly appropriate to oil lands. House Rep. No. 2657, 57th Cong., 1st sess.; Senate Rep. No. 2756, 57th Cong., 2d sess.; 36 Cong. Rec., Pt. 1, p. 83; Pt. 2, pp. 1561, 1682. The committee report contains this explanation of the object of the bill: "The law now requires that upon each mining claim there shall be performed each and every year at least $100 worth of work. The courts have held with reference to lode-mining claims that this annual labor may be done upon any one of a group of mining claims, provided the said work tends to benefit the entire group, but the Land Department of the Government seems to be of opinion that the annual labor upon placer-mining claims must be done upon each of said claims. There is good reason for this holding when applied to the ordinary placer claim containing deposits of gold, because in such case the gold lies upon the surface or near the surface, and general development work being upon and near the surface does not tend to benefit other claims than the one upon which the work is actually done, but in the case of oil-mining claims the situation is different. It is neces-

sary to bore wells for great depths in order to determine whether or not oil exists in paying quantities. These wells are expensive, and it is the opinion of the committee that the industry itself will be more benefited by permitting the owner to spend his means in sinking a single well in order to demonstrate the possibilities of the property than it would to require him to distribute his means among several claims. In other words, it is better that $500 should be spent in one place until the character of the oil deposit has been demonstrated than it is to require the same amount of money to be spent in five different places."

The argument for plaintiff in error, while conceding the general rule to have been established that assessment work could avail nothing except when performed upon or for the benefit of a claim in which a discovery of mineral already had been made, insists that the difficulty and great expense attendant upon the sinking of wells to make discovery of oil made it evident that the application of the doctrine was a great burden upon the oil miner; and that this, having been brought to the attention of Congress, was the moving cause of the enactment of the Act of February 12, 1903. This contention finds no support in the enacting clause, and but little in the proviso. It gives to the somewhat indefinite language of the proviso an effect that would greatly enlarge instead of confining the meaning of what precedes, and would render the statute a radical departure from the previous policy of the mining laws. The legislative history of the act, as well as its phraseology, fails to support the contention.

Nor is there great force in the suggestion that with respect to oil claims upon which discovery already had been made there was no need to encourage the doing of work tending to determine their oil-bearing character, because this would already have been established by the antecedent discovery. It hardly is necessary to say that

the discovery of oil upon several contiguous claims does not render it wholly unimportant that assessment work thereafter done by the common owner upon one of the claims, in order to be credited to him as if it had been distributed among the several claims, shall be of general benefit to the group. This is the object of the act, and except as the proviso specifically declares "determination of oil-bearing character" to be of benefit to the contiguous claims, little is added to the effect of § 2324, Rev. Stats., respecting group assessment work. But we cannot declare a determination of the "oil-bearing character" of a claim upon which oil already has been discovered to be a matter so idle as to require us to seek a strained construction of the statute.

In our opinion the act shows no purpose to dispense with discovery as an essential of a valid oil location or to break down in anywise the recognized distinction between the *pedis possessio* of a prospector doing work for the purpose of discovering oil and the more substantial right of possession of one who has made a discovery and performs annual development work to maintain his right to the mineral until patent is obtained. Hence the Supreme Court of California did not err in overruling the contention that by force of the act discovery work upon the "Sampson claim" having a tendency to determine the oil-bearing character of the contiguous "Rawley-Schley claim" conferred upon plaintiff in error inchoate rights in the latter claim, of which it was not in possession and upon which it had made no discovery.

Judgment affirmed.